1952. File No. O. Boroughs/52

Legal DEPARTMENT
A BRANCH

Subject:— Opinions under the Bombay

p 113E

Municipal Boroughs Act, 1925

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Boroughs/52

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R.I.No. 743-Confl
21-11-51.

In exercise of power conferred by sub-section (1) of section 219 of the Bombay Municipal Boroughs Act, 1925, Government passed an order superseding the Nasik, Borough Municipality for a period of three years with effect from 12-1-1948, and directed the Commissioner, C.D. to appoint a suitable person to exercise the powers and perform the duties of the superseded municipality. In pursuance of Government direction, in exercise of power conferred upon him in that behalf by clause (b) of sub-section (1) of section 219, the Commissioner, C.D. appointed Shri S.G.Chavan to be Administrator of the superseded Nasik Borough Municipality with effect from 12-1-1948 to exercise and perform all the powers and duties of the said municipality during the period of its supersession. Since the period of supersession which was to determine on 12-1-52 has been extended by Government upto 31-3-1952, the L.S.G. and P.H.D. requests R.D. to issue necessary orders for extending the term of service of the Administrator of Nasik Borough Municipality.

p.475 file 4636/33-II

p.473 -do-

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p.1 ante.

2. The R.D. view is that since by the Commissioner C.D's order the Administrator was appointed to perform the powers and duties of the superseded Nasik Municipality "during the period of its supersession" and no definite period is specified no fresh orders are necessary for extending the term of service of Shri Chavan . R.L.A. is requested to advise.

3. Since under section 219(2)(b) of the Bombay Municipal Boroughs Act, 1925, Shri S.G.Chavan has been appointed as Administrator of the superseded Nasik Borough Municipality "during the period of supersession". It means that his appointment as Administrator of the superseded municipality is co-terminus with the full period of supersession

B.K.G. 8/5/ 4c.

inclusive of the period extended from time to time until the municipality is re-established. Consequently no fresh orders extending the period of service of Shri Chavan as Administrator are necessary. The R.D. view is correct.

E.P.B. 9/1

DS(Civil Reply may be as at A

R.T.E. 10/1

R.L.A. P.M.I. 10/1

U.R. to R.D.No.53-Confl., dt.11-1-52.

B.K.B. 8/5/ 4c.

LEGAL DEPARTMENT.

In view of R.L.A's opinion No.15699, dated 4th October 1951, the L.S.G. & P.H.D. presumes that the residential Government buildings can be considered to be "beneficially occupied" and not solely used or intended to be used for purposes of profit within the m eaning of proviso (a) to section 73 of the Bombay Municipal Boroughs Act, 1925, and as such their rateable value will have to be fixed by a person appointed by Government under section 74(2) of the said Act. R.L.A. is requested to confirm this view.

Under proviso (a) to section 73 of the Bombay Municipal Boroughs Act, 1925, buildings belonging to Government and used solely for public purposes and not used or intended to be used for purposes of profit are exempt from payment of all forms of municipal taxation except a special sanitary cess, a drainage tax and water rate. Under section 74(1), such buildings are, however, liable to pay annually, in lieu of rate on buildings, a sum ascertained in the manner provided in sub-sections (2) and (3) of section 74. Section 74(2) refers only to such buildings exempted under section 73 as are beneficially occupied. It appears, therefore, that the special reduced payment in lieu of rate on buildings is to be on buildings belonging to Government and used solely for public purposes and beneficially occupied (see Advocate General's opinion No.77 dated th November 1928). Although provision of residence for Government officials has been held to be a public purpose, it cannot be generally laid down that all Government buildings occupied by officials for their residence are used solely for a public purpose and not for purposes of profit within the meaning of proviso (a) to section 73 of the Bombay Municipal Boroughs Act, 1925. In some cases Government may be levying economic rent from the occupants. All residential buildings fetching substantial rent should be considered as buildings used or intended to be used for purposes of profit (see R.L.A's opinions No.3801, dated 22-11-1927; O Munic-Cities 8 dated O Munis- Cities 8 dated 30-4-28 and O Munis-Cities dt. 4-12-28)

23-3-1928. In his opinion No.87 dated 19-12-1928, the Advocate General, agreeing with R.L.A. opined as follows :-

" "Profit" means a return on expenditure and does not necessarily mean a dividend paying profit. The provision of a bungalow for a Government officer is generally a part of the officer's pay. If the provision of the quarters is merely a part of the remuneration of the officer's services then the residence would be for profit, but if the residence of the officer in the quarters is a part of the services which the officer is paid to perform then residence would not be for profit. Whether the bungalows are occupied for profit should depend upon the questions -

(i) Whether the officer is required to reside in the quarters assigned to him as part of his duty, or

(ii) Whether he is merely permitted for his own convenience to reside in those quarters.

In the former case, he is compelled to reside on the premises at all times for performing his duty and performs his duty by that act of residence and the residence is solely for a public purpose and not for profit. In the latter case, the provision of bungalow is a part of the remuneration for the services the officer has to perform and, therefore, the residence though for a public purpose is for the purpose of profit in as much as the bungalow fetches rent which is a part of the remuneration of the officer."

The post Office buildings fall under the category (i) and consequently the R.L.A's opinion No.15699, dated 4th October 1951 has no application to the present case. The Ex. Engineer, Bijapur Division, states that Government is not making any profit on the buildings, but the fact is that the buildings do fetch rent. Consequently, in view of the opinions referred to, residential buildings fetching a substantial rent should be considered as used or intended to be used for purposes of profit and fall under category (ii). The view expressed by the Director of Local

Authorities .....

Authorities, Southern Division and concurred in by the L.S.G. & P.H.Deptt. is not correct.

Id/——————— 8/1
Additional Secretary to Government.

U.R. to L.S.G. & P.H.D.No. 217 , dated the 9th January 1952.

B.K.S. 8/5/ 40.

Legal Department.

It appears that under rule 6, Schedule item No. 5 of the Baroda Municipal Rules, lands can be given on a licence at the rate of 4 annas per square foot per month for petty shops, etc. However, as a matter of concession it appears that the Baroda Municipality has resolved to charge 50 per cent. of the usual rent for the open lands given to the displaced persons for a period of one year from 1st August 1950 and by another resolution it has extended that concession for a further period up to 31st July 1952. The question raised for the R.L.A's consideration is whether the rule requires to be amended for the purpose.

Rule 6, Schedule item No.5 of the Baroda Municipal Rules falls under section 58(j) read with section 90 of the Bombay Municipal Boroughs Act. Proviso (a) to section 58 provides that no rule or alteration or rescission of a rule made under this section shall have effect unless and until it has been approved by the Provincial Government. It is, therefore, apparent that it is not necessary to publish any amendment of the rules framed under that section and invite objections from the public. It would be sufficient if the amendment is approved by Government. The concession granted by the Baroda Municipality is purely temporary. Consequently it does not appear necessary to amend the rule permanently. The Baroda Municipality has already passed resolutions which would have the effect of amending the rule temporarily provided the sanction of Government is given. In the circumstances, Government may give its approval to the resolutions passed by the Municipality.

Id/-------- 10/1
Additional Secretary to Government.

U.R. to L.S.G. .. P.H.D., No. 287 , dated the 10th January 1952.

B.R.S. 8/5/ 40.

R.I.No. 23097
9-11-51-

p.51 ante. The H.D. considers that since before 8th December 1949 the State Transport was a Government Department, it was not liable to pay octroi duty in respect of the State Transport stores brought within the octroi limits of the Mahad Municipality. R.L.A. is requested to advise whether the view is correct.

R.L.A. P.M.L. 10/1 E.P.S. 9/1 D.S. (Civil) A.T.K.10/1

B.K.S. 8/9/ 4c.

Office of the R.L.A.

Seen and returned.

The view taken in paragraph 2 of the Home Department office note dated the 5th November 1951 is correct.

Id/- P.M.L. 10/1
Remembrancer of Legal Affairs.

U.R. to H.D., No. 317 , dated the 11th January 1952.

B.K.S. 8/5/ 4c.

Office ofthe R.L.A.

The question raised for the R.L.A.'s consideration iswhethe a provision similar to section 123(6) of the Representation of the People Act, 1951, can be made in the election rules framed under the Bombay District Municipal Act, 1901, the Bombay Local Boards Act, 1923, and the Bombay Municipal Boroughs Act, 1925.

Section 123 of the Representation of the People Act, 1951, in sub-sections (1) to (8) enumerates the various corrupt practices for the purposes of this Act. One of these corrupt practices provided in sub-section (6) is the hiring or procuring, whether on payment or otherwise, of any vehicle or vessel by a candidate or his agent or by any other person with the xx connivance of a candidate or his agent for the conveyance of any elector (other than the candidate himself, the members of his family or his agent) to or from any polling station provided under section 25 or a place fixed under sub-section (1) ofsection 29 for the poll. Section 22(4) of the Bombay District Municipal Act, 1901, provides:

"A person shall be deemed to have committed a corrupt practice within the meaning of the last preceding sub-section, -

(i) who with a view to inducing any voter to give or to refrain from giving a vote in favour of any candidate, offers or gives any money or valuable consideration, or holds out any promise of individual profit or holds out any threat of injury to any person,

or

(ii) who gives, procures, or abets the giving of a vote in the name of a voter who is not the person giving such vote.

And corrupt practice shall be deemed to have been committed by a candidate, if ithas been committed with his knowledge and consent or by a person who is acting under the general or special authority of such candidate with reference to the election.

Explanation.- A 'promise of individual profit' includes a promise for the benefit of the person himself, or of any one in whom he is interested. It does not include a promise to vote for or against any particular municipal measure."

A similar provision is contained in section 15(4) of the Bombay Municipal Boroughs Act, 1925, with this difference that Explanation 1 is slightly ....

slightly differently worded. That Explanation provides:

> "For the purposes of this section the term 'gratification' is not restricted to pecuniary gratification or gratifications estimable in money, and includes all forms of entertainment and all forms of employment for reward."

Explanation 2 defines the expression "a promise of individual profit". A similar provision is also contained in section 19(4) of the Bombay Local Boards Act, 1923. It is clear from these provisions that for the purposes of these Acts, the definition of "corrupt practices" as contained in the aforesaid provisions shall prevail and it shall neither be curtailed nor expanded. There is no provision in these Acts for making any rules for the purposes of either expanding or curtailing that definition and even if there is any provision, such provision would be ultra vires. In these circumstances, it appears that the proposal to insert in the election rules framed under the Bombay District Municipal Act, 1901, the Bombay Local Boards Act, 1923, and the Bombay Municipal Boroughs Act, 1925, a provision similar to section 123(6) of the Representation of the People Act, 1951, would not be legally feasible. To achieve the object in view those Acts will have to be amended.

Id/-P.M.L. 2/2
Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D., No. 1742, dated the 4th February 1952.

B.K.S. 8/5/ 4c.

1555
23. 1. 52.

Submitted with ref. to L.S.G. & P.H.D. note at pp. 73-74 ante. It appears that the Sholapur Municipal Borough has entered into an agreement with the Sholapur District Central Library in accordance with which on the former paying to the latter a sum of Rs.2000/- the Library is conducting three free newspaper reading sections in the City. Some of the terms of the agreement require that two municipal councillors shall be appointed on the managing body of the library, and on the Committee for the selection of news papers and periodicals respectively and that the Library shall make an annual report to the municipality. The question is whether in the circumstances it would be lawful for the Sholapur Municipality to contribute the amount to the Central Library. The L.S.G. & P.H.D. has invited attention to the recent opinion of the Addl. Secy. No.17249, dt.1.11.51 in which the Addl. Secy. while distinguishing the earlier opinions Nos. 2730, dt.13.2.51, and 7720 dt.16.5.51, had observed that those opinions related to cases in which the local authorities intended to give donations ~~to give donations~~ to institutions over which they had no control, although the institutions were stated to be carrying out some of the objects which the local authorities are entitled to carry and that if the local authorities had any control over the said institutions as they have over educational institutions to which they give grant - in - aid, the question would have been different. From this observation the L.S.G. & P.H.D. has drawn a presumption that as the Sholapur Municipality exercises a control over the affairs of the Central Library on the strength of the agreement entered into between the two bodies, there is no objection to the Sholapur Municipality continuing to pay the contribution. The L.L.A. is requested to confirm this presumption.

Slip 'm'
Slip 'Y'
Slip 'Z'

2. The presumption made by the L.S.G. & P.H.D. that in view of the terms of the agreement it would be permissible for the Sholapur Municipality to contribute .....

contribute towards the expenses of the Central Library appears to be correct. Such expenditure would be relatable to clause (b) of sect.71 of the Boroughs Act, 1925.

D.W.D. 31/1/52.
D.S. (Opinion) As in para 2.

Id/R.T.K. 1/2
Id/R.L.A. Id/P.M.L. 1/2

U.R. to L.S.G. & P.H.D. No.1786, dt. the 4th Feb., 1952. B.K.S. 9/5/ 40

R.I.No. 25628
15/12/51.

The Director of Local Authorities, S.D., refers to p. 1 ante. R.L.A's opinion No.4148, dated 16-4-49 and states that since the payment of victory allowance made by the Belgaum Municipality to its servants was not made either for services or upon any other consideration, but was really a gift wrongly described as bonus, it would not be competent for the Municipality to regularise the matter by framing a rule under section 58 of the Bombay Municipal Boroughs Act, 1925. The L.S.G. and P.H.D. does not agree with this view of the D.L.A. It is of opinion that the 'bonus' paid by the Municipalities can be said to have been "upon other consideration". R.L.A. is requested to advise whether the view taken in L.S.G. and P.H.D. note is correct.

Sd/-E.P.B. 5/2
D.S. (Civil)

The view taken by the Director of Local Authorities in para. 1 of his letter at p. 1 ante is not correct. If bonus can be paid for additional service or upon some other consideration, it is not understood why the freedom bonus paid by the Municipality to its employees cannot be considered as having been paid upon some other consideration even though it may not be for additional service.

It may be that the allowance provided for in section 58 and 59(2) of the Bombay Municipal Boroughs Act, 1925, is of a recurring kind but that difficulty can be obviated by making a rule enabling the Municipality to pay bonus under certain circumstances whenever an opportunity of the kind arises. Consequently, there is not much substance even in the second contention raised by the D.L.A. in para.2 of his letter.

Sd/-R.T.K. 6/2

R.L.A. Id/-P.M.L. 6/2

U.R. to L.S.G. & P.H.D.No.2087, dt. 9th February 1952.

B.K.S. 9/5/ 4c.

L.D.R.I. No. 4201 dt. 28-2-52.

Submitted w.r. to L.S.G. & P.H.D. office note at pp-79-81 ante. In his opinion No. 1786, dated 4-2-1952 (p. 75 ante) the R.L.A. had approved of the view expressed by the L.S.G. & P.H.D. that as the Sholapur ~~Mility~~ Municipality had entered into an agreement with the Sholapur Vachan Mandir, it was competent to it to contribute towards the expenses of the Library. The Deptt' now proposes to issue a general circular explaining the position that it would be competent to Municipalities. to contribute to liberaries situate within the municipal limits provided the M'lities have their representatives on the managing committees and exercise general control over them through their representatives. The R.L.A. is requested to advise whether the above would meet the requirements of the B'bay Municipal Boroughs Act, 1925, and the B'bay Dist. Municipal Act, 1901.

R.L.A. Sd/.P.M. L. 3/3 Sd/-D.W.D. 1/3/52.

Sd/- D.S. (Opinion) As in para 2 Sd/-M.T.K. 1/3.

B.K.S. 9/5/ 4c.

Office of the R.L.A.

It is presumed the L.S.G. & P.H.D. proposes to issue a circular only on the extent ofthe power of municipalities to contribute towards the expenses incurred by libraries. Under section 66 of the Bombay Municipal Boroughs Act, 1925, a municipality can apply the municipal fund and all property vested in it for purposes of the Act within the limits of the municipal borough. Under clause (b) of section 71 it is open to a municipality to provide either wholly or partly out of the municipal property and fund for the constructing, establishing or maintaining libraries. Similar provisions are to be found in sections 52 and 56 (b) of the Bombay District Municipal Act, 1901. The L.S.G. & P.H.D. proposes to issue instructions to municipalities that there is no objection to their contributing to libraries established within the municipal area provided the municipalities exercise control over the management of the libraries by nominating representatives on the managing committees of the libraries. A circular to this effect would appear to be in order.

Sd/.P.M.L. 3/3
Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No. 3503 dated the 4th March 1952.

B.K.S. 9/5/

4c.

Office of the R.L.A.

The expression "kept for use" was interpreted in Chunilal v. Ahmedabad Municipality 41 Bom. L.R. 1249 as meaning kept for normal use. What is essential for the levy of wheel tax under section 73(ii) of the Bombay Municipal Boroughs Act, 1925, is that the vehicle must be kept for use within the municipal limits. The Vehicles used by Government Officers which were plying within the municipal limits though they are kept outside those limits, would substantially and normally be in use in the municipal limits and the fact that they are kept outside the municipal limits and also ply for some time outside those limits, would not be relevant (See R.L.A's opinion Nos.2761 dated 24-5-3 dated 2-3-49). The question therefore would depend on facts in each case and no general proposition can be laid down in such cases. Vehicles of officers in the Kopri Colony which mostly ply within the limits of the Thana Municipality would be liable to wheel tax under section 73 (ii) of the Act. (cf. R.L.A's opinions No. 708 dated 20-1-49; No. 10642, dated 27-7-50 and No. 244-P dated 28-8-1934).

Sd/-P.M.L. 26/2
Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D., No.3155, dated the 27th February 1952.

B.K.O. 9/5/ 4c.

Office of the R.L.A.

Bombay Municipal Boroughs Act, 1925 Sections 63(1) and 90.

R.L.A.'s opinion No.5344 dated 14-6-1941.

As regards 'A' on page 35 ante.- Under sub-section (1) of section 63 of the Bombay Municipal Boroughs Act public streets as also sewers and drains vest in and belong to the Municipality. In the Ahmedabad Municipality v. the Government of Bombay (XLIV Bom. L.R. p.354) the word "belong" in this section has been construed to mean ownership of the Municipality. It would not therefore be possible for Government to claim any share in the amount recovered by the Belgaum Municipality for allowing the construction of steps over the municipal gutters. (See also Ahmedabad Municipality vs. Bombay Government XLVI Bom.L.R.643).

2. As regards 'B' on page 36.- The rule framed by the Belgaum Municipality under section 58(j) of the Bombay Municipal Boroughs Act, 1925 provides that:

> "For every licence issued by the Chief Officer for constructing steps over municipal gutters, a fee shall be payable in advance at the rate of 8 annas per square foot for each financial year or part thereof."

It is clear from this rule that what is sought to be recovered is a 'fee' in respect of the licence. As stated in R.L.A's opinion No.5344, dated the 14th June 1941 a by-law empowering the Chief Officer to grant a licence or permission to construct steps over gutters is competent under section 61(1)(ee) read with section 138(2) of the Act. The Belgaum Municipality has framed the requisite by-law. Section 90(1) in this behalf provides that -

> "where any licence is granted under this Act or when permission is given thereunder for the making any temporary erection or for putting up any projection for the....

the temporary occupation of any public street or other land vested in the Municipality the authority granting or giving such licence may charge a fee for the same."

It is therefore competent for the Municipality to charge the fee in question, and the levy of such fee would not give the grantee any higher right than that of a licence.

Sd/-P.M.L. 22/3
Remembrancer of Legal Affairs.

U.H. to L.S.G. & P.H.D., No. 4426, dated the 24th March 1952.

B.K .S. 9/5/ 4c.

L.D., R.I. No. 4200 dated 28.2.52.

Submitted with reference to the note of the L.S.G. & P.H.Deptt at p. 3 ante. For the facts of the case please see the letter dated 14.1.1952 of the Examiner, Local Fund Accounts, Bombay. Attention is invited to the R.L.A's opinions No. 414 dated 16-4-49 and No. 9371 dated 6-7-1950. The question referred to the R.L.A. is whether according to the provisions of Section 59(2) of the Bombay Municipal Boroughs Act, 1925, Municipalities cannot sanction, without the sanction of Govt. or the D.L.As. as the case may be, any salary or addition to salary or allowances if the result of such additions would be to create a charge on municipal funds in excess of Rs. 100/- p.m. on account of any one post whether by way of salary or allowances or any increase of salary or allowances if the result of such additions would be to create a charge on municipal funds in excess of Rs. 100/- on account of any one post.

Sd/--------
19-3- 52.

Sd/- D.S. (Civil)

B.K.S. 9/5/ 4c.

Office of the R.L.A.

Attention of the L.S.G. & P.H.D. is invited to the R.L.A's recent opinion No.12000, dated 27th July 1951 where the question is considered.

Sd/-V.M.L. 24/3
Remembrancer of Legal Affairs.

U.O. to L.S.G. & P.H.D.No. 4478 , dated the 25th March 1952.

B.K.S. 9/5/ 4c.

Under section 10 of the Bombay Municipal Boroughs Act, 1925, the State Government has been empowered to determine specially for each municipality the number of councillors of the municipality and to make rules prescribing the number and extent of the xx wards to be constituted in each municipal borough and the number of councillors to be elected by each ward. In virtue of this provision, Government in L.S.G.& P.H.D. G.R No. 2674 dated 4th December 1951 at pages 47-49 ante has determined the number of wards, the extent of each ward and the number of councillors to be elected by each ward. Under this G.N. ward No.VII is to consist of All Nos. 15-16, 22 and 23 and to elect 2 councillors; and ward No.VIII is to consist of All No.17,21,25 to 27, 29 and 30 and is to elect 3 councillors to the Kalyan Burough Municipality. It is now complained that the number of seats allotted to wards No.VII and VIII were on the population basis which is now found to be wrong. It is, therefore, now xx proposed to combine wards No.VII and VIII and to reduce the total number of seats from 31 to 29. The Collector of Thana thinks that if wards are amalgamated fresh publication of voters list will have to be made under rule 3(2) of the Bombay Burough Municipalities Election Rules, 1950 which will naturally result in postponing the whole election programme.

2. The question for consideration of the M.L.A. is whether (1) if two wards namely, No.VII and No. VIII are combined, it is necessary to have the new list prepared within the frame work of 2 lists of wards No. VII and VIII or whether it would do if 2 lists are shown in Part I and II belonging to a combined ward and (2) whether it will be necessary to republish the lists as above or it would do if the notice is published at conspicuous places in Kalyan in local paper about the change made.

Sd/- K.J.P. 5/9 As amended.

Addl. Secy. Sd/-J.R.D. 9/4.

B.K.S. 9/5/ 4c.

Legal Department.

The view taken by the Under Secretary, Local Self Government and Public Health Department that there is nothing in rule 3(2) of the Bombay Burough Municipalities Elections, 1950 to show that the lists may have to be republished is not correct. Sub-rule (1) of rule 3 of the Bombay Burough Municipalities Election Rules 1950, provides that the Returning Officer shall, not less than 4 months prior to the date on which the term of office of the councillors is due to expire prepare a list of voters. Sub-rule (2) of the said rule 3 provides that the list of voters shall show the persons entitled to vote in each ward separately in alphabetical order. Rule 10 provides that when the list of voters has been prepared and, where necessary revised, as hereinbefore provided in compliance with any order passed in that behalf by the Appellate authority or by the Judge in Second Appeal, as the case may be a copy thereof signed by the Returning Officer, shall be the municipal election roll. It appears that the municipal election roll in the case of Kalyan Burough Municipality has been duly published under rule 10 containing the names of voters in alphabetical order in each ward. The list of voters in wards No. VII and VIII also must have been published in alphabetical order. The proposal to combine wards VII and VIII would involve the preparation of the lists in the alphabetical order of the combined ward. Under section 13 of the Act read with rule 10 it is contemplated that the municipal election roll is to be published as a whole and not in parts. To rearrange the list in part I and part II under combined ward only would be repugnant to the provisions of rule 3(2) of the said rules.

In view of this legal position, the second question does not survive.

Sd/-J.R.D. 10/4
Additional Secretary to Government.

U.R. to L.S.G. & P.H.D.No. 5384 , dated the 10th April 1952.

B.K.S. 9/5/ 4c.

R.I.No.6649 of 5-4-52.

Submitted with reference to L.S.G. & P.H.D. notes at pp. 97-101 ante.

One Dr. V. K. Bakshi and others have made a representation to Government in the L.S.G. & P.H. Department, complaining against the revised assessment of house-tax recently carried out by the Satara City Municipality on properties in the municipal borough of Satara.

The L.S.G.& P.H.Dept., had called for the remarks of the Collector, Satara North, and of the Director of Local Authorities, Central Division, in the matter and the same will be found at pp.25-32 ante and p. 23 ante respectively.

It is proposed by the L.S.G. & P.H.Dept., to give a brief reply to Dr. Bakshi on the various points ~~s~~ raised by him and a draft letter prepared by it for the purpose has now been marked to the Additional Secretary presumably for remarks.

Id/---------
9/4

Sd/- D.S. (Civil) The draft letter, as revised, is in order.

Sd/-B.P.B.
28/4

Sd/-R.L.A. Sd/-P.K.L.
28/4

U.R. to L.S.G.& P.H.D.No.6991 dt. 3-5-52.

B.K.S. 3/5/ 40.

D.S. (Civil)

In his letter No.Ahmednagar-4/106, dt. 5-12-51, the Director of Local Authorities, C.D., refers to the Village Panchayats Rules for the levy of a tax on brokers or dalals in cattle markets and states that if such tax is levied under sect. 89(2) of the Bombay Village Panchayats Act, 1933, in view of the analogous provision contained in sect. 73(xiv) of the Bombay Municipal Boroughs Act a municipality can control the fuelwood transactions by framing rules prescribing rates of broker tax, and rates of brokerage etc. The question for R.L.A.'s consideration is whether in view of sect. 73(XIV) of the Bombay Municipal Boroughs Act, 1925, a municipality can frame rules prescribing tax on brokers dealing in fuelwood.

p. 1 ante

Section 73 of the Bombay Municipal Boroughs Act, 1925, enumerates the various forms of taxes leviable by a municipality. Under clause (xiv) a municipality can impose any other tax (other those specified in clauses (i) to (xiii) not being a toll on motor vehicles and trailers save as provided in sect. 14 of the Bombay V.T. Act, 1935, which under the Constitution the State Legislature has power to impose in the State. A tax on brokers dealing in fuel-wood would be in the nature of a tax on profession or calling and as such would be covered by entry 60 in List II in the Seventh Schedule to the Constitution, and consequently the State will have power to impose such tax. That being the case, under clause (xiv) of sect. 73 it would be competent for the municipality to levy a tax on persons who carry on the business as fuel-wood brokers.

Sd/-B.F.B.
3/5

R.L.A.

Under Sections 173(1) and 61(a)& 61(2), of the Bombay Municipal Boroughs Act it would be competent to the Municipality to open a fuelwood market and to frame by-laws for the purpose of regulating it

by licence & prescribing rates of brokerage etc.

It would also be competent to the Municipality

Under Section 73(XIV) m to levy a tax on

brokers (R.L.A's Opinion No. 11417 dated 13.10.1944)

Sd/-P.M.L.
3/5

U.R. to L.S.G. & P.H.D. No. 7135, dt. 6th May 1952. B.K.S. 9/5/ 4c.

Legal Department.

R.I.No.6563 dated 29-4-1952.

Submitted with reference to the L.S.G. & P.H.D. note at pp. 101-102 ante. Attention is invited to R.L.A.'s opinion No.3503, dated 4-3-52 in which the R.L.A. had advised that municipalities could be instructed that there was no objection to their contributing to libraries established within the municipal area provided the municipalites exercised control over the management of the libraries by nominating representatives on the managing committees of the libraries. The necessary instructions were accordingly issued in Circular dated 20-3-1952 (p.97 ante.) The Director of Local Authorities, S.D., in his letter at p. 99 ante has raised the question whether if the municipalities are expected to exercise proper control they would have to nominate more than half the members of the managing committees. The L.S.G. & P.H.D. considers that it would suffice if two or three members are m nominated by the municipalities for this purpose. The R.L.A. is requested to advise.

p.83 ante.

Sd/- D.W.D.
2/5

Sd/-L.P.B. 2/5 Reply:

R.L.A. No question of law arisis on this reference. It is for the Administrative Department to decide, as a matter of policy the number of nominated members necessary in Each Case for exercising effective control.

Sd/-P.M.L. 2/5

U.R. to L.S.G. & P.H.D. No. 7149 dt. 6-5-52.

B.K.S. 9/5/ 4c.

Office of the R.L.A.

One of the disqualifications specified in section 12 of the Bombay Municipal Boroughs Act, 1925, for which under section 28(1)(a) of that Act the councillor becomes disabled from continuing to be a councillor, is of having directly or indirectly by himself or by his partner any share or interest in any transaction of loan of money advanced to or borrowed from any officer or servant of the Municipality. Ordinarily, a loan of money is treated as a contract by which one delivers a sum of money to another, and the latter agrees to return at a future time a sum equivalent to that which he borrowed. By executing the promissory note, Shri Bidkar has made himself liable to pay a definite sum to the municipal servant Kanade. Under section 118 of the Negotiable Instruments Act there is a presumption that every negotiable instrument is made or drawn for consideration; and the facts show that there was a definite consideration in law for this promissory note. The loan for the purpose of this section need not be in a direct loan. The substance of the transaction is that in case the Municipal servant Kanade is called upon as surety to make good the amount Shri Bidkar will be obliged to pay him the particular sum. This is one method of indirectly taking a loan; for, if it were held otherwise the provisions of the section which is enacted so as to avoid the conflict between a municipal councillors interests and duties would always be frustrated by interposing a third party between a lender and himself.

2. On the whole, therefore, having regard to the object of the provision and the construction which must accordingly be given to it, I am disposed to hold that Shri Bidkar has incurred the disqualification.

Sd/-P.M.L
Remembrancer of Legal Affairs.

U.O. to L.S.G. & P.H.D.No. 7969, dated 13th May 1952.

B.K.S. 9/5/ 40.

Submitted with reference to the L.S.G. & P.H.D. office note at page 81 ante.

2. It appears that on the written requisition of 22 Councillors of the Dhulia Borough Municipality under section 35(2) of the Bom. Municipal Boroughs Act, 1925, With a view to voting the continuance in office of the Chief Officer special general meeting of the Municipality was called by the President on 13th January 1952. The written request under section 35(2) which appears at page 37 the accompanying case papers is for considering the removal of Shri Bopshetty from the post of Chief Officer for alleged derrileation in duty. In the meeting so held on 13th January 1952 after discussion on the advisability of continuing the Chief Officer in the Municipal service, a resolution was proposed by one Jagannath Bachhulal to the following effect :

"And therefore Mr. Bopshetty (the Chief Officer) should be removed from the post of Chief Officer of the Municipality under section 34 A(1) of and Rule 189 and that this resolution should be sent to the Provincial Govt. for necessary action."

On this resolution a point of order was raised by another Councillor that the meeting was not called for the purpose of recommending to the State Government under section 34A(1) the removal of Shri Bopshetjy and therefore that point could not be considered at the meeting. The President of Municipality Shri Vankhedkar who was in the chair upheld the point of order. The Collector has stated that the President left the meeting without considering the implication involved in this point of order. A careful scrutiny of the minutes of the proceeding of this meeting howevever show that after the President ruled out of order this point he proceeded with the other business before the meeting and that he declared the meeting as having ended (Barkhast) only after all ....

all other business before the meeting had been attended to and there was no business pending. After the President left at 8-30 p.m. some twenty Councillors who still remained in the meeting hall elected the Vice-President Shri R.D. Gandhi as the Chairman of the meeting and unanimously passed a resolution under section 34A(1) for the removal of the Chief Officer and for referring the matter to Govt. Shri Gandhi thereafter requested the Collector W.Kh. to cancel the ruling of the President whereby he declared the point out of order and to hold the proceedings of the extended meeting under his chairmanship as valid. The D.C.P. West Khandesh considers that since no special meeting is necessary for action under section 33(2) the written notice for calling the special general meeting was for the recommendation to the State Govt. and therefore the decision of the President on the point of order was wrong and illegal and can be set aside by the Collector under section 214. He further considers that it was competent for the remaining councillors to elect Shri Gandhi as Chairman and to continue the proceedings of the meeting. The Collector however considers that since there is no question of execution of any order or resolution of the ~~meetingx~~ Municipality no action can be taken under section 214(1) of the Act. The Director of Local Authorities, C.D. has suggested that since the Collector has failed to take the action Govt. may do so under sub-section (3) of section 214.

The L.S.G. & P.H.D. agrees with the view taken by the D.C.P., W.K. and has requested the R.L.A. to advise.

B.K.D. 9/5/ 40.

Office of the H.L.A.

Bom. Municipal Boroughs Act, 1925. Section 34A(1).

Ruling of the Chairman on point of order.

Action under section 214(3)

The requisition for calling the special general meeting and the agenda for that meeting clearly show that the meeting was to consider the question of the removal of the Chief Officer from office and not the recommendation contemplated by section 34A(1) of the Bombay Municipal Boroughs Act, 1925. That being so, the Chairman of the meeting was not in error in upholding the point of order. Moreover, under the general law of meetings the Chairman's decision on a point of order is final. For that reason and also for the reason that the meeting was not adjourned but dissolved because the business of the meeting was finished and there was no other business for consideration, it was not competent to the dissatisfied members to appoint another chairman and to proceed with the business.

Section 214(1) cannot be used for the purpose of correcting a wrong ruling given on a point of order. Moreover, since the Collector declined to take action under clause (1) of section 214, there is no scope for the State Government's action under clause (3).

Sd/-P.M.L.
Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No. 9183, dated the 2nd June 1952.

B.K.S. 9/5/ 4c.

Office of the R.L.A.

It appears that the Standard Vaccum Oil Company imports petrol products in bulk within the Hubli municipal limits and stores them in its storage tanks. Some portion of this bulk is thereafter exported by the Company from Hubli to other municipal areas for sale. The Company's claim for refund of octroi in respect of such portion of petrol products exported to other areas from Hubli has been rejected by the Hubli Municipality under by-law 7(c) of the Hubli Municipal Octroi Rules and By-laws. The L.S.G. & P.H.D. considers that, as the export and import is done in the present case without any change of form, and sale cannot be considered to have taken place in the Hubli Municipal limits, by-law 7(c) would not be attracted. The R.L.A. is requested to advise.

By-law 7(c) of the Hubli Municipal Octroi Rules and By-laws provides that no refund will be admissible in the case of goods which have changed their form or in respect of which any business has been transacted by way of sale, barter or hire or any other way. When petrol products are exported from Hubli for sale outside, there is absolutely no change of form, nor is the business of sale of such products transacted within the Hubli Municipal limits. Consequently, by-law 7(c) would not be attracted. The view taken by the L.S.G. & P.H.D. in this respect is correct.

It may, however, be pointed out that reading by-law 4 with by-law 6 and by-law 8 together it appears that refund can be claimed only on establishing the identity of the goods imported under a declaration made under by-law 4. In the present case the Standard Vaccum Oil Company imports petrol products in bulk in Hubli Municipal limits and stores them in its storage tanks. Consequently, it will be difficult ....

difficult to prove whether the petrol products which are proposed to be exported from the Hubli Municipal limits are the same in respect of which a declaration is made under by-law 4. As, however, such products would be liable to a double tax unless refund has been granted by the Hubli Municipality, the levy of the tax by the Hubli Municipality would be deemed to be unfair in its incidence. Consequently, action may be taken under section 102 of the Bombay Municipal Boroughs Act and the Municipality may be required to amend its by-laws to the effect that in the case of petrol products imported within the municipal limits and thereafter exported, such product would be deemed to be the same product which was imported and no further identity should be demanded to entitle a refund of the tax.

Sd/- P.M.L. 23/6
Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D.No.10483 dated the 25th June 1952.

B.K.S. 9/5/ 4c.

Office of the R.L.A.

It appears that several municipalities are levying octroi on State Transport buses which are garaged within their limits. It appears that they have framed the necessary rules for the levy of octroi on goods brought within the municipal limits for use and consumption. The General Manager of the State Transport Corporation considers that the transport vehicles operating on highways and linking the urban areas cannot be brought within the ambit of section 73(iv) of the Bombay Municipal Boroughs Act,1925, or section 59(iv) of the Bombay District Municipal Act, 1901. The R.L.A. is requested to advise.

Under section 73(ii) of the Bombay Municipal Boroughs Act, a municipality can levy a tax on all vehicles, boats or animals used for riding, draught or burden and kept for use within the said borough, whether they are actually kept within or outside the said borough. Sub-clause (iv) provides for the levy of an octroi on animals or goods or both within the octroi limits for consumption or use therein. It appears that there is a distinction between the levy of a tax under sub-clause (ii) and a tax under sub-clause (iv) as the former is leviable for having kept the vehicle for use within the ~~limit~~ municipal borough, while under the latter it is leviable for bringing within octroi limits for consumption or use therein. Similar provisions are contained in the Bombay District Municipal Act. Octroi is different from a wheel tax. If transport vehicles are brought for the first time within the municipal limits for use therein such as, for instance, for picking up or letting down passengers, they would be deemed to have been brought within the municipal limits for use and as such would be liable to the levy of octroi. The fact that these vehicles are taken back and again brought for operations would not make the vehicles liable to octroi tax again.

In Dullabh Shivlal v. T.C.Hope (1871) a Bombay High Court Reports A.C.J.213, it was held that when a tax is imposed upon goods imported into a town for consumption and such goods , after having been subjected to the tax upon being imported into the town, are afterwards taken out for sale into the neighbouring villages and brought back unsold, such goods are not liable to be subjected to tax a second time. The principle enunciated in that case would apply and when once the vehicles are subjected to octroi duty, they would not be liable again to such duty even if they are taken out of the town and brought back again. In the circumstances, it appears that the State Transport vehicles would be liable to the initial payment of octroi provided the rules of the municipalities clearly provide for the levy of such duty on vehicles brought within the municipal limits for use. If it is intended to exempt the vehicles even from that duty, the Rules may be suitably amended.

Sd/-P.N.L. 26/6
Remembrancer of Legal Affairs.

U.O. to L.&G. & P.H.D.No. 10561 dated the 26th June 1952.

B.K.o. 9/5 4c.

Legal Department.

R.I. No. 13405 dated 7-7-1952.

Submitted with reference to Secretary, L.S.G. 's note at p. 185 ante. By G.R., L.S.G. & P.H.D. No. S.91(18), dated 17-8-1951 Government sanctioned the proposal of the Godhra Municipality to amend its octroi rules and by-laws sanctioned in 1946, and also sanctioned a revised octroi schedule. Subsequently on the representation from merchants and other citizens of the town but before the revised rates came into force Government withdraw the sanction in respect of 11 items mentioned in the Schedule and directed that the Municipality should continue to levy octroi on those items at old rates. In the meanwhile the Municipality itself on 14-12-1951 had noticed its intention of reducing the rates in respect of the said items as sanctioned by the G.R. of 17-8-1951 (vide the notice at p. 51 ante). The municipality after passing the necessary resolution then moved the Government to sanction the revised rates. The revised rates as sanctioned in the G.R. of 17-8-1951 were to come into force with effect from 1-2-1952. The sanction with respect to 11 items was withdrawn by telegram on 29th January 1952. The Municipality passed a resolution on 30th January 1952 that Government be moved to give sanction to the revised rates as then proposed. The President actually wrote to the Collector in this behalf on 6th February 1952 (p.169 ante). The Municipality's proposal was forwarded by the Collector to the Director of Local Authori ties who, however, thought that the revised rates proposed by the Municipality related to items sanction in respect of which had been withdrawn altogether; and that it was therefore necessary for the Municipality to submit a fresh proposal after following the prescribed procedure. The question raised for the consideration of the R.L.A. is whether it is necessary for the Municipality to submit fresh proposals.

B.K.S. 9/5/ 4c. I agree. Sd/.R...K. 12/7 R.L.A. P.M.L. 12/7

Office of the R.L.A.

It is true that in this case the 11 items in respect of which the municipality by its notice dated 14-12-1951 notified its intention to levy octroi at reduced rates had been directed to be deleted from the octroi Schedule accompanying G.R.,L.S.G. & P.H.D. dated 17-8-1951. But the intention of the municipality is quite apparent viz. that it proposed fresh rates of octroi as mentioned at p.51 ante. The municipality passed a resolution to levy reduced rates of octroi and published the same for inviting objections The objections in respect of this proposal which have been considered by it have been forwarded to Government (vide the President's letter at p. 169). In the circumstances the municipality appears to have complied with the requirements of section 75; and there would appear no objection to treating the present proposal as a fresh proposal. The contention of the municipality appears to be correct.

Sd/-P.M.L. 15/7
Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D., No. 11688, dated the 15th July 1952.

B.K.S. 10/5

Submitted.

pp.21-23 ante

2. Please see para 2 of R.L.A's opinion No. 19906, dated the 11th December 1951 and the letter of the

p.38 ante.

Collector of Satara North dated the 3rd February 1951.

The premises known as "Kot" belonging to Shrimant Pant Pratinithi of Aundh within the Karad Municipal limits were exempted from the Municipal taxation under the Karad Municipality's Resolution passed in the year 1861. The consideration for the exemption was the placing ~~ging~~ at the disposal of the Municipality a Dharamshala for its use by the Pant Pratinidhi. The Kot is a colony and consists of 21 buildings owned by different indivisuals & some of these buildings are of exclusive ownership of the Pant Patinidhi. It appears notwithstanding the exemption the Municipality levied during 1917, 1919 and 1920 house tax and conservancy cess in in respect of these buildings. This resulted in a Civil suit by the Patinithi and one Shri N.V. Pendharpur

pp.41-49 ante.

being C.S. No. 353 of 1925 in the Court of the Jt. Second Class Subordinate Judge, Karad and in this suit the Municipality has been permanently restrained from levying a house tax on any building inside the kot. Now the Karad Municipality has arrived at an understanding with the Pant Pratinithi whereby the old agreement of 1861 has to be cancelled and a new agreement substituted therefor. The terms of the new agreement are compressed

p.39 ante.

in the Municipalities Resolution No. 2/28, dated 8th June 1950. Under these terms the relevant conditions are that -

(1) the buildings in personal occupation of the Pant Pratinithi and his servants would alone be exempt from the Municipal taxation; and

(2) in case of litigation by persons affected the Pant Pratinithi should handover all relevant papers and documents to ~~be~~ the Municipality who would be solely responsible for the defence of the suit.

It appears the Municipality hopes to recover by this move about Rs. 1200 to 1500/- per annum by way of taxation and appears to have taken the risk of litigation. The reason for the exemption proposed to be granted to the Pant Patinidhi it has been stated is that it is a consideration for the annulment of the agreement of 1861 but for which there would have no advise decision in the Karad C.S.No. 353 of 1925. p.37 ante.

Sd/-R.T.K. 17/6

Sd/-P.M.L. 17/6

Sd/-M.L.A.

B.K.S. 10/5.

OFFICE OF THE R.L.A?

Bombay Municipal Boroughs Act, 1925, sec. 75(a)(i).

R.L.A's opinion No.19906 dated 11-12-1951.

In view of the circumstances stated by the Collector in his letter at page 35 ante there appears no objection to granting exemption from the tax to the buildings of the Pant Pratinidhi in the Kot; but it is doubtful whether the new agreement between the Municipality and the Pant Pratinidhi can enable the Municipality to withdraw the exemption from the tax allowed to other buildings in the Kot under the decree of the Court. At any rate the new agreement would not worsen the position of the Municipality.

Sd/- P.M.L. 19/6
Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D.No. 10286, dated the 20th June 1952.

B.K.S. 10/5/ 4c.

Office of the R.L.A.

Levy of Octroi and deductions on goods carried by Rail

Constitution of India Sch.VII Entries 52 & 56 List II and Entry 89, List I

R.L.A's Opinion No. 9492 dt. 15-6-1951.

The questions referred to the R.L.A. for opinion are:-

(1) Whether goods carried by rail and entering into the municipal limits would be covered by entry No.52 in List II in 7th Schedule to the Constitution of India, and

(2) Whether it would be permissible to levy deduction as a tax on goods imported by rail in the same way as stated inthe case of goods imported by road or inland waterways.

Entry No.52 in List II in the 7th Schedule is "Taxes on the entry of goods into a local area for consumption, use or sale therein." In virtue of this entry it will be competent to levy a tax on the entry of goods into a local area provided that the goods on the entry of which such tax is levied are intended for consumption, use or sale in the local area in which they enter. It is immaterial that such goods are carried into the local area by rail. Entry No.52 in List II corresponds to entry No.49 in List II in the 7th Schedule to the Government of India Act, 1935. In the case of the Punjab Flour and General Mills Co. Ltd., Lahore vs. the Chief Officer, Corporation of the City of Lahore (1947, F.C.R.17) the Federal Court has observed that there is no limitation to be implied in entry No.49 in List II in regard to the manner in which the goods are transported into a local area. The same observations are true also with respect to entry No.52 in List II in the 7th Schedule to the Constitution of India.

2. The Legal position as regards deductions from the amount of refund of octroi levied by municipalities on goods imported within their limits and exported subsequently has been considered in R.L.A's opinion

No.9493 dated 15th June 1951. In virtue of entry No.56 in List II, deductions from the amount of refund of octroi can be competently levied by municipalities under the relevant provisions of the Municipal Acts on goods carried by road or inland waterways. But no power to levy such deduction can be given to the Municipalities in respect of goods carried by railway. Such deductions would amount to terminal taxes on goods within the meaning of entry No.69 in List I in the 7th Schedule to the Constitution of India, and, therefore, the levy of such deduction would be beyond the power of the State and therefore of the Municipalities unless saved by Article 277 of the Constitution.

Sd/-P.M.I. 13/5
Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No. 440-Confl., dated the 13th May 1952.

B.K.S. 10/5/ 4c.

Office of the A.L.A.

Prior to the establishment on 15.1.1949. of a statutory board under the Housing Board Act, 1948, the materials etc. were imported in fact by Government and not by a separate authority, the Housing Board then being merely an advisory board; and the work was done as the work of a Government department. Therefore, the import prior to 15.1.1949. would be by a public authority as contemplated by rule 4(2)(c) of the Sholapur Municipality Octroi Rules & Bylaws, rule 2(F) of which defines "public" authority" to include Government also. Subsequent to 15.1.1949, however, the statutory Housing Board started functioning, and that Board cannot be treated as a public authority within the meaning of the definition given in rule 2(F). Public authority" is defined in that rule to mean Government, Local Board or the Municipality. Even otherwise excepting for certain special purposes, the Housing Board has not been endowed with the character of a local authority. The exemption given by rule 4(2) would not, therefore, be available after 15.1.1949.

Sd/-P.M.L. 21/5/52.
Remembrancer of Legal Affairs.

U.R. to L.S.G. &P.H.D. No. 8520, dated 21st May 1952.

B.K.S. 10/5/ 4c.

Office of the R.L.A.

An officer appointed under section 47(2) of the Bombay Municipal Boroughs Act, 1925, and section 39 of the Bombay District Municipal Act, 1901, is practically in the position of an arbitrator, and although it is open to him to consult an independent lawyer he can do so provided he does not thereby delegate or surrender his power of judgment. The R.L.A. may consult the Remembrancer of Legal Affairs, but it should be made clear to him and to the parties that the ultimate decision must be his, and that he must not feel himself bound by the R.L.A's opinion.

Sd/- P.M.L. 27/5
Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No. 8905, dated 28th May 1952.

B.K.U. 10/5/ 4c.

Office of the R.L.A.

In view of R.L.A.'s opinion No.20431 dated 22-12-1951 it will be clear that the amount placed at the disposal of the District Building Committee by Government forms part of the "public" funds" or the funds belonging to the public revenue. The expression 'public funds" in proviso (b) of section 52 of the Bombay District Municipal Act and proviso (b) to section 66 of the Bombay Municipal Boroughs Act has a reference to Government funds or to funds belonging to public revenue and not to public funds in the sense of funds promoted by public generally or funds to which it is open to the public generally to subscribe. (See Advocate General's opinion No. 9 dated 3-5-1950). From G.R. E.D. No.F.B.C. 27503 dated ~~Illegible~~ 3-3-1951 it is clear that Government pays one-third of the cost of construction of primary school buildings and the remaining two-thirds is to be ~~x~~ met by the municipality either from its own funds or partly from its own funds and partly from popular contribution. The amount of cost contributed by the municipality towards the cost of the buildings would amount to contribution by the municipality to the "public fund" within the meaning of proviso (b) of section 52 of the Bombay District Municipal Act and proviso (b) of section 66 of the Bombay Municipal Boroughs Act, and merely because a part of it is raised by public contribution or popular contribution would not affect the character ~~xx~~ of such fund. It would, therefore, be legally competent for the non-authorised municipalities to contribute or to pay grants to the District Building Committees for construction of school buildings.

Sd/- P.M.L. 4/7
Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D., No. 11143 , dated the 5th July 1952.

B.K.S. 10/5/ 4c.

Office of the R.L.A.

It appears that the quadrannial revision of the assessment list of the Dharwar Municipal Borough was commenced late in the year 1950 and was compelled on 30th April 1951. The work of hearing objections to the valuation and assessment of the properties is still going on. The revised lists were, however, brought into force during the year 1951-52 and the recovery of taxes was started without waiting for the disposal of objections. The President, Citizens Welfare Association, Dharwar, contends that, though it is permissible to bring the list in force from the beginning of a year without waiting for its authentication, it is imperative that the list should at least be authenticated before the close of that year with a view to make it a conclusive act as required by section 81(6) of the Bombay Municipal Boroughs Act and that the list in question was not so authenticated before the close of the year 1951-1952 and consequently, the recovery made according to the revised list being illegal, the excess amount thus recovered should be refunded. The Director of Local Authorities, S.D., considers that there is no time limit within which the assessment list is to be authenticated and the absence of authentication does not in any way affect the validity of the list; that all that section 81(6)(ii) and section 84(2) imply is that the list authenticated for one year cannot be a conclusive evidence for the subsequent year in respect of matters enumerated in section 81(6)(ii) without following the procedure prescribed in sections 81 and 82; and that what is required for recovery of the tax is the preparation of the list and not its authentication and the delay in disposing of objections would not invalidate the list nor would it vitiate the recovery proceedings. R.L.A. is requested to advise whether the view taken by the Director of Local Authorities is correct.

2. It is true that in the Borough Municipality of

Amalner v. Pratap Spinning, Weaving, and Manufacturing Co. Ltd. (54 B.L.R. 451) it was held that 'the provisions of sections 78 to 81 must be read as a whole and that the liability to pay the rates arises only when all these provisions have been complied with". In deciding this case the High Court has doubted the view of the High Court taken in Ambalal Sarabhai v. Ahmedabad Municipality (23 B.L.R. 48) where Shah J. observed: "I do not see how the mere fact that the officer did not sign the list could affect the question as to whether the levy was legal or not." Mr. Justice Shah's view was that the absence of authentication of the list would not make the list invalid nor would it affect the Municipality's right to levy the assessment. In Subbappa v. Bonni (50 B.L.R. 701) Dixit J. observed that the liability to tax arises independently of the objections or of the disposal of the objections to the assessment list. This decision supports the view taken by Mr. Justice Shah in Ambalal Sarabhai v. Ahmedabad Municipality but in the Amalner Municipality v. Pratap Mills the High Court has tried to distinguish this case. But the main principle enunciated in Ambalal Sarabhai v. Ahmedabad Municipality and Subbappa v. Bonni is clearly to the effect that the right of the municipality to levy the assessment arises out of its right to impose the rate under section 78 and the mere fact that the assessment list has not been properly authenticated and the objections are not heard from the assessees would not make the imposition of the rate invalid. The view taken by the Director of Local Authorities is consistent with the view taken by the High Court in Ambalal Sarabhai v. Ahmedabad Municipality and in Subbarpa v. Bonni.

3. It is understood from Shri Kotwal, who appeared on behalf of the Amalner Municipality in the High

Court in Amalner Municipality v. Pratap Mills, that the Pratap Mills propose to take the matter to the Supreme Court and for that purpose an application for leave to the High Court is filed and that application will in all probability be granted. It is also understood from him that he proposes to advise the Amalner Municipality to file cross objections in that case on this issue. Pending the decision of the Supreme Court ~~is~~ in the appeal proposed to be filed, it appears advisable to follow the decisions in Ambalal Sarabhai v. Ahmedabad Municipality and Subbanna v. Ponni which lay down the law as accepted so far. The Amalner Municipality may also be advised to take the question to the Supreme Court and if necessary Government may give legal assistance to it.

Sd/- P.M.L. 13/7
Remembrancer of Legal Affairs.

U.O. to L.S.G. & P.H.D., No. 12225, dated the 24th July 1952.

B.K.S. 10/5/ 4c.

Office of the R.L.A.

Resignation of

The Chief Office Dhulia Borough Municipality.

It appears that Shri M.S. Bopshetty, who was the Chief Officer of the Dhulia Borough Municipality for the last 21 years, tendered his resignation of his office to the President of the Municipality. This resignation was undated and it bears the date of 3rd July 1952 as the date of receipt by the Municipality. His resignation was placed by the President before the general body on 10th July 1952 and was accepted. Before it was so done, Shri Bopshetty sent a telegram to the President of the Municipality on 4th July stating that the resignation undated obtained from him as collateral guarantee on June 3rd was conditional and as there was breach of the guarantee, the resignation was inoperative and it was withdrawn. In view of these circumstances, the question raised for the R.L.A's consideration is whether the acceptance of the resignation tendered by Shri Bopshetty was lawful.

The word 'resignation' is not a term of art. Resignation means an intimation simply that the servant either is going to leave or desires to do so. It is invalid unless it amounts to notice or is acceded to by the master. In the present case Shri Bopshetty contends that his resignation was conditional and was intended as a collateral guarantee on his part for fulfilment of the arrangement arrived at between him and the Municipality and it was to take effect on the coming into force of the municipal pension rules which were then awaiting the sanction of Government. If there is any truth in the allegations of Shri Bopshetty, it would be

possible to argue that the resignation was under such conditions as would not make it effective even as a notice. It appears that the Director of Local Authorities has been asked to report on the allegations of Shri Bopshetty and that report has not yet been received by Government. Local Self Government and Public Health Department may, therefore, await the receipt of the report of the Director of Local Authorities and after receipt thereof, it may be forwarded to Legal Department for considering the whole question.

Sd/-P.N.L.
28/8
Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D., No. 14065, dated the 28th August 1952.

B.K.S. 10/5/ 4c.

Bombay Municipal Boroughs Act, 1925.

Sect. 12(2)(c).

The Collector of Sholapur has disqualified Shri A.S.Ahire, a councillor of the Barsi Municipality under section 12(2)(c) of the Bombay Municipal Boroughs Act, 1925, on the ground that Shri D.M. Vaidya, an employee of the Barsi Municipality, stood surety to Shri A Ahire in respect of a loan of Rs.3,000/- taken by him from the Barsi Central Co-operative Bank Ltd. Shri Ahire has now appealed to Government. The question for the H.L.A.'s consideration is whether the order of the Collector is valid.

2. Clause (c) of section 12(2) of the Bombay Municipal Boroughs Act, 1925, provides that no person may become a councillor who has, directly or indirectly, by himself or his partner, any share or interest in any transaction of loan of money advanced to or borrowed from any officer or servant of the municipality. The loan in the present case was advanced to Shri Ahire and not to Shri Vaidya. Nor was the loan borrowed from Shri Vaidya. It is true that Shri Vaidya was a surety for the loan given by the Bank to Shri Ahire. Under section 126 of the Indian Contract Act, the person who gives the guarantee is called the surety. Under section 145, in every contract of guarantee, there is an implied promise by the principal debtor to indemnify the surety, and the surety is entitled to recover from the principal debtor whatever sum he has rightfully paid under the guarantee but no sums which he has paid wrongfully. In Reed v. Norris (1837 40 E.R. 678) it was held that where a surety gets rid of and discharges an obligation at a less sum than its full amount, he cannot as against his principal

make himself a creditor for the whole amount, but can only claim, as against his principal, what he has actually paid in discharge of the common obligation. It appears from these provisions of the Contract Act that a surety becomes a creditor of the principal debtor only when he repays the loan to the principal creditor and to the extent to which he has so repaid. In other words, the relationship of creditor and debtor between the surety and the principal debtor arises only when the surety has been made to pay the amount of the loan. By the time Shri Ahire was elected as councillor of the Municipality, Shri Vaidya was not required to repay the loan to the principal creditor. Consequently, he had not become creditor of Shri Ahire. In these circumstances, it appears that clause (c) of section 12(2) was not attracted and Shri Ahire could not be disqualified. This is so according to the strict interpretation of that provision. However, it appears that in such a case there is likelihood of a conflict of interest and duty as the councillor, who borrows the loan on the guarantee of a municipal employee, would be under an obligation to such employee. In the circumstances, it appears that section 12(2)(c) requires to be amended for the purpose .

Sd/- [illegible].L.L.
30/8
Memorandum of Legal Affairs.

U.R. to L.S.G. & P.H.D. No. 14279, dated the 3rd September 1952.

B.E.S. 10/5/ 4c.

L.D.R.I. No.21090A dt. 9-9-52.

S.A.S.

By his order dated 29th December 1951, the Collector of Poona in exercise of power conferred by rule 2(f) of the Bombay Borough Municipalities Election Rules, 1950 appointed the Chief Officer of the LonaVala Municipal Borough to be the Returning Officer for the purposes of preparation of lists of voters and also such other matters relating to successfully carrying out the elections of the said municipality. He also fixed the programme of the various stages of general elections Subsequently, he learnt from the President of the LonaVala Municipal Borough that there was no permanent and qualified Chief Officer for the Municipality who could function with effect from 15-2-1952; and that the appointment of the permanent head clerk Shri M.K. Gijare as acting Chief Officer made by the municipality could not be continued beyond the statutory period of two months, that is, 15th of February 1952. When the Collector was informed of this position he considered that the appointment of Shri Gujare as Chief Officer after 15-2-1952 became void and that owing to failure of the Municipality to appoint a permanent or new Chief Officer under section 33 of the Bombay Municipal Boroughs Act, the work done by Shri Gijare as Returning Officer became materially irregular amounting to illegality. Although the work of election programme had advanced to the late stage of recording votes, in view of the illegality the Collector postponed the elections and revised the programme of election right from the publication of voters lists according to rule 5 of the Bombay Borough Municipalities Election Rules, 1950. As the statutory period required to chalk out the revised programme necessitated a period of at least four clear months and as the term of office of the Municipality was due to expire on 10-6-1952, it

was not possible to hold the elections before that date. Consequently, the Collector chalked out a new programme for holding of elections ~~xf~~ on 18-9-1952 and moved Government to issue orders for ~~xxkxxk~~ extension of the term of office of the Municipality up to 30-9-1952. In its telegram dated 13-5-1952, Government informed the Collector that the elections should be postponed and another Returning Officer should be appointed in Accordance with the Election Rules and that he should proceed with fresh election programme. He was also informed that orders extending the term of office of the Municipality were being issued separately. It appears that by its notification ~~x~~ No.S.90(71) dated the 16th May 1952 issued under section 25(1) of the Bombay Municipal Boroughs Act, 1925, Government invited objections, if any, to the extension of the current term of office of the Councillors of the Lonawala Municipality up to 30th September 1952. A final notification extending the term up to 30th September 1952 was issued on 3rd June 1952.

Shri Bhoine and Shri Mehta have given notices to the Lonavla Municipality to cancel the elections scheduled to take place on 18-9-1952 on the ground that the voters lists have not been prepared and published according to ~~x~~ law. The main argument advanced is that the publication of voters lists on 16-5-1952 is not legal as the normal term of the Municipality on that date was due to expire on 10-6-1952; and that the current term of office of the Municipality was extended up to 30-9-1952 at a later stage by the notification dated 3-6-1952.~~xxxxxx~~ It is also contended that the fresh voters lists have not been prepared after the issue of notification dated 3-6-1952 by which the term of office of the councillors was extended up to 30-9-1952. The Local Self Govern ment and Public Health Department considers that the elections were postponed as there was no validly appointed Returning

Officer and accordingly the Collector was asked to appoint another Returning Officer and to publish a revised election programme. In the circumstances when the procedure required by the Rules was validly followed there was no irregularity in the publication of the voters lists on 16-5-1952. R.L.A. is requested to advise whether the Local Self Government and Public Health Department view is correct.

Sd/-E.P.B.
10/9

D.S. (Civil)

B,K.S. 10/5/ 4c.

Office of the R.L.A.

The view taken by the Local Self Government and Public Health Department is correct. Under rule 3(1) of the Bombay Borough Municipalities Election Rules, 1950, the Returning Officer, shall, not less than four months prior to the date on which the term of office of the councillors is due to expire and on the corresponding date in each subsequent year, prepare a list of voters. In the present case the list of voters was prepared and published on 9th February 1952 and the normal term of the councillors was to expire on 10th June 1952. Consequently the list of voters was prepared within the time prescribed by rule 3. The next stage after the preparation of the voters' list is the publication thereof under rule 5. There is no period prescribed for the publication of the list of voters under rule 5. Under rule 9 any person whose name is not entered in the list of voters published as aforesaid and who claims to have his name entered therein and any person whose name is entered in the said list who thinks that his own name or that of some other person has been wrongly or incorrectly entered therein may apply in writing within a fortnight from the date of publication of the list to the Returning Officer for amendment thereof. This rule prescribes the period of a fortnight from the date of publication of the list for applying for revision of the list. In the present case as the Returning Officer who was appointed could no longer function after 15th February 1952 since he ceased to be the Chief Officer of the Municipality, the Collector had to revise the programme of election which he was entitled to do and at his request Government extended the period of office of the councillors up to 30th September 1952. According to the revised programme, the Collector fixed the publication of the voters' list on 15th May 1952 and other stages on various dates. As stated above the preparation of the voters' list

64

63.

was done within the prescribed time limit and the publication of the voters' list was refixed on 15th May 1952 with a view to give the opportunity for revision of the list under rule 9 within the prescribed time. In these circumstances, the programme fixed by the Collector did in no way contravene the provisions of the rules. Shri Bhoine and Shri D.P. Mehta appear to contend that, as the term of the Municipality was extended up to 30th September 1952, the list of voters should have been prepared afresh, that is to say, four months prior to the date of the expiry of the extended term in accordance with rule 3(1) and the list prepared in February 1952 by the then Returning Officer is invalid. There is no substance in this contention. Under rule 3(1), the minimum period of four months prior to the date on which the term of the office of the councillors is due to expire is prescribed and that provision has been sufficiently complied with. They appear to make a confusion of the preparation of the list of voters with the publication of the list of voters. The publication of the list of voters is not required to be done not less than four months prior to the expiry of the term of office of the councillors. In these circumstances, there is no defect in the procedure followed by the Collector and a suit if filed would be defensible.

Sd/-P.M.L.
12/9
Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No. 14969/A dated, 12th September 1952.

B.K.S. 10/5/ 4c.

L.D.R.I. No.15154 dt. 29-7-1952.

S.A.G.

The Examiner, Local Fund Accounts refers to the provisions of section 68 of the Bombay District Municipal Act, 1901, and of section 85 of the Bombay Municipal Boroughs Act, 1925, and states that though there is sufficient authority for the municipality to recover property tax from the occupiers of municipal properties in addition to the rent recovered from them it is noticed that the practice in levying this tax under the said sections is not uniformly followed by the municipalities. He states that whereas the Nadiad, Kaira, Godhra, Sholapur municipalities levy property tax on municipal buildings and recover it from the actual occupiers in addition to the rents; the municipalities like Thana, Dohad, Ratnagiri do not levy any municipal tax on their buildings which are rented out. He states that the practice of assessing municipal properties followed by the municipalities of Nadiad, Kaira, Godhra, Sholapur etc. is correct and requests that orders of Government may be issued for the guidance of audit after consulting R.L.A. on the point. The papers are referred to R.L.A. with a view to enable the Local Self Government and Public Health Department to issue instructions for the guidance of all municipalities.

Sd/-E.P.B.
11/9

D.S. (Civil) Reply may be:-

A circular on the lines proposed by the L.S.G. & P.H.Dept. would be in order.

Sd/-R.T.K. 12/9

R.L.A. Sd/-P.M.L.
12/9

U.R. to L.S.G. & P.H.D.No.15165/16-9-52.

B.K.S. 10/5/ 4c.

Office of the R.L.A.

It appears from the letter of the Vice President, Broach Borough Municipality, at page 37 ante that all efforts of the Municipality requiring Messrs. Gopal Mills Ltd., Broach, to abate the nuisance have failed. It is not understood under what circumstances, on whose initiative and on what conditions the Mill authorities have deposited a lakh of rupees with the Broach Municipality for setting up a purification plant at the cost of the Mills under section 194 of the Bombay Municipal Boroughs Act. The Municipality is, however, expressing its unwillingness to complete the work as it fears that it would involve it in a costly litigation with the Mills. It is now proposed that under section 218 of the Bombay Municipal Boroughs Act Government should carry out the work and recover the costs. The R.L.A. is requested to advise whether there would be any legal objection to Government so doing it.

2. Section 218(1) of the Bombay Municipal Boroughs Act provides that when the Provincial Government is informed, on complaint made or otherwise, that default has been made in the performance of any duty imposed on the Municipality by or under this Act or by or under any enactment for the time being in force, the Provincial Government, if satisfied after due inquiry that the alleged default has been made, may direct the Commissioner to fix a period for the performance of that duty. Sub-section (2) provides that, if that duty is not performed within the period so fixed, the Commissioner may appoint some person to perform it and direct that the expenses of performing it with a reasonable remuneration to the person appointed to perform it shall be forthwith paid by the Municipality. It is clear from these provisions that Government can provide for performance of the duties of a defaulting municipality only when such duties are ....

are imposed on the municipality by or under this Act or by or under any enactment for the time being in force. The erection of a purification plant for the purpose of abting nuisance in the present case is not a duty imposed on the municipality by or under the Bombay Municipal Boroughs Act or by or under any enactment for the time being in force. Discharge of waste water by the Mills into the river is no doubt a nuisance under section 159 and steps could be taken for the prosecution of the offending Mills. Under section 194(1), the Municipality can execute the work in default of the owner or occupier to execute the work, and recover expenses. But the work must be such as is required to be executed by the owner or occupier of any building or land under the provisions of the Act. The erection of a purification plant is not a work required to be executed under the provisions of the Act although such erection may help to remove the nuisance. Consequently, it is doubtful whether the acceptance of Rs. 1 lakh as deposit from the Mills for the erection of a purification plant would, strictly speaking, fall under section 194(1). That apart, since the erection of the purification plant is not a duty imposed on the Municipality by or under the provisions of this Act it would not be lawful for Government to pass any order under section 218.

7. In view of the defiance of law and the flouting of authority by the Gopal Mills, it appears that some drastic action is absolutely essential. Steps may, therefore, be taken under Chapter X of the Criminal Procedure Code.

Sd/-P.M.L.
12/8
Remembrancer of Legal Affairs.

U.R. to L.S.G.& P.H.D.No. 13321 , dated the 14th August 1952.

B.K.S. 10/5/ 4c.

20612
3-5-52

In para 3 of opinion No.12225, dated 24-7-52, R.L.A. suggested that if the Pratap Mills take the matter to the Supreme Court against the decision of the High Court in the Amalner Municipality vs. Pratap Mills, it is understood that the Amalner Municipality would file cross-objections in that case. It was also suggested that if necessary, Government should give necessary legal assistance to the Amalner Municipality in successfully contesting the issue before the Supreme Court. By legal assistance, perhaps it is intended that the Attorney General should be engaged on behalf of the Amalner Municipality in the appeal before the Supreme Court and that he should be given the necessary instruction on behalf of the Municipality.

Sd/-B.P.B.
25/9

B.K.U. 10/5/ 4c.

Office of the R.L.A.

Seen and returned.

The Department may please treat this as urgent, since limitation Period has also to be borne in mind.

Sd/- P.M.L.
26/9
Remembrancer of Legal Affairs.

U.O. to L.S.G.& P.H.D.,No. 16009/A, dated the 27th September 1952.

B.K.J. 10/5/ 4c.

Office of the R.L.A.

The question for R.L.A's consideration is whether the Lonavla Borough Municipality is legally justified in claiming assessment from the Lonavla Khandala Electric Supply Coy. Ltd. for the municipal lands over which the electric poles are erected.

Under clause (i) of section 73 of the Bombay Municipal Boroughs Act, 1925, a Municipality is competent to impose a rate on buildings or lands or both situate within the Municipal Borough. Sub-section (1) of section 78, which makes provision for preparation of assessment list, provides that such list shall contain -

(a) x x x

(b) x x x

(c) the names of the owner and occupier, if known,

(d) the valuation based on capital or annual letting value, as the case may be, on which the property is taxed; and

(e) the assessment of the tax assessed.

It is thus clear that the names of both owner and occupier of the property are to be included in the assessment list. The persons who are primarily liable for the payment of a rate are specified in section 85, which provides that a tax in the form of a rate on buildings or land or both shall be leviable primarily from the actual occupier if he is the owner of the property or holds it on a building or other lease from the Government or from the Municipality, or on a building lease from any person. Otherwise, the tax shall be primarily leviable as follows:-

(a) if the property is let, from the lessor;

(b) if the property is sub-let, from the Superior lessor;

(c) if the property is unlet, from the person in whom the right to let ~~on~~ the same vests.

The principle that valuation is to be based on

the rent which might reasonably be expected to be paid for the occupation of land is well established. The question which is of importance is whether the exercise of right to lay down pipes or cables and send through them water, gas or electricity, amounts to an occupation of land by a public utility concern. The question has been judicially considered and it is held that such undertakings which were in occupation of land by means of their pipes were rateable (pp.419-420 of Ryde on Rating). The occupation of land by electric cables for the purposes of an electricity undertaking is also similar occupation (Ibid pp.420-424). It will thus be noticed that the criterion of the value of the occupation of land by a public utility concern is the rent which might be reasonably expected to be paid for that occupation. It was perhaps on these basis that the Assessment Officer held that the Lonavla Khandala Electric Coy. Ltd. was liable to payment of rateable value in respect of the poles and wires erected on the land. However, as pointed out in R.L.A's opinion No.1388, dated 14-2-1941 for exercising his powers under section 12(1) of the Indian Electricity Act, 1910, in the case of land dedicated to public use, such as street lands or road sides, the licensee does not require any consent of the local authority or of the owner or occupier concerned and no question of payment of compensation or of any annual rent would arise in such case. As pointed out in R.L.A's No.2813 dated 21-5-32, "The Indian Electricity Act, 1910, not only does not provide for the levy of rent in such cases but authorises the licensee to use the land for the purposes aforesaid without payment of rent". Since the poles are fixed by the Coy. in exercise of its statutory right and the Lonavla Municipality is not entitled to claim any rent from the Lonavla Khandala Electric Supply Coy. for the user of the street land, though in actual occupation of the road x land underneath the electric

poles, it cannot be said to be hoding the same under any building or other lease from the Municipality As such land would be unlet, and the Municipality being the "owner" as defined in section 3(14) the Electric Company would not be liable under section 85 for payment of the tax levied in respect of such land occupied by it for the erection of electric poles.

Sd/-P.M.L.
3/9
Remembrancer of Legal Affairs.

U.H, to L.J.G.& P.H.D.No. 14366, dated the 4th September 1952.

B.K.D. 11/5/ 4c.

22228
22-9-52

S.A.S.

This very question whether when the term of office of the Councillors was extended, in pursuance of the resolution passed by the Municipality electing the President and Vice-President 'for the remaining period of the triennium' the President and Vice-President of the Barsi Municipality can continue to act as President and Vice-President even after expiry of the triennium for which they were elected, or whether on the ~~extension~~ extension of term of office of the Councillors fresh election of the President and Vice-President would be necessary, was referred to the R.L.A. in the year 1950 and R.L.A. agreed with the view expressed by the Secy., L.S.G. & P.H. Deptt (see R.L.A.'s No.16680 dated 27-11-1950). It is surprising that L.S.G. & P.H.Deptt states that no opinion on the point is expressed by R.L.A. when reference on this very subject was actually made to the R.L.A. and R.L.A. gave his opinion on that question. Attention of the L.S.G. & P.H.Deptt. is invited to R.L.A.'s No.16680, dated 27-11-1950 where this very question was considered.

Sd/-E.P.B.
25/9
D.S. (Civil) As at A

Sd/-R.T.K. 25/9

R.L.A. Sd/-P.M.L.
25/9

U.R, to L.S.G. & P.H.D.No. 16008 dt. 27-9-52.

D.E.S. 11/5/ 4c.

S.A.S.

At its general meeting convened by the Kolhapur Municipality on 12-6-1952, it passed a resolution announcing payment of the donation of Rs.1501/- as contribution to the Kolhapur Sports Association in the interest of the spread of physical education and culture. It appears that 3 wrestlers from the Kolhapur City proper had been selected by the All India Sports Association for the ensuing Olympic Games in Finland. The Kolhapur Sports Association requested the Kolhapur Municipality for financial aid to enable them to send these wrestlers to represent India at Helsinki in the Olympic Games. In his letter dated 27-9-52 the President of the Kolhapur Municipality states that as the wrestlers are from the Kolhapur City proper, going abroad for participation in the Olympic Games, this Municipality in its turn has resolved to make a contribution of Rs.1501/- out of the Municipal Fund to the Kolhapur Sports Association in response to its request to make up the huge deficit. The President himself states that the expenditure thus incurred is not permitted by sections 63 to 67 of the Bombay Municipal Boroughs Act, 1925 as it is not for one of the purposes for which the Municipality has been authorised by law to spend the municipal fund and he therefore, requested the Collector to move Govt. under the provisions of sec.66 of the Act to grant the necessary sanction to make this expenditure. The L.S.G. & P.H.D. relies upon the A.L.A.'s opinion No.6554 dated 24-4-51 and holds that it would not be competent for the Kolhapur Municipality to make a donation to the Kolhapur Sports Association. The Under Secretary, L.S.G. & P.H.D. however considers that the said opinion is not applicable to he present case. He observes that :-

"In the present case it is proposed to give contribution towards the Sports Association which is likely to promote public health and education pertaining to sports and it seems the proposal would be covered by cl.(r)

of sec.71 of the Municipal Boroughs Act.
But in this case as in the case of libraries, the municipality should exercise control over the management by nominating its representative on the Managing Committee." R.L.A. is requested to advise whether the view expressed by the Under Secretary, L.S.G. & P.H.D. is correct.

B.K.S. 11/5/ 4c.

Office of the R.L.A.

Since the Kolhapur Municipality has no hand in the administration of the Kolhapur Sports Asscciation, the question whether the contribution to the Association would be covered by clause (r) of section 71 of the Bombay Municipal Boroughs Act, 1925, would not arise. The contribution not being covered by section 66(2) would be illegal.

Sd/- P.M.L.
16/11
Remembrancer of Legal Affairs.

U.O. to S.L.S.G. & P.H.D., No. 18743/A, dated the 11th November 1952.

B.K.-. 11/5/ 4c.

Office of the R.L.A.

The question referred to the R.L.A. for opinion is whether the silk yarn and rayon yarn are liable to octroi duty under the Kalyan Municipality Octroi Rules.

The only item to which silk yarn and rayon yarn can be referred in the Schedule is item No.119 of the Schedule; for, items Nos. 56, 88, 91 and 93 would not be applicable. Item No.93 deals with other textile fabrics and would, therefore, be inapplicable to yarns. Item No.119 upon which the Municipality relies reads as follows: "Cinematograph and accessories, Photographic accessories, Ivory, Silk, Thread, Pictures of wood and stone, Chinaware." Silk yarn would undoubtedly be included in the term "silk". Both in Webster's Dictionary and in Dr. Murray's New English Dictionary one of the meanings of silk given is thread or cloth made of the above material, namely, silk, silken thread. Silk by itself is a wide term and would ~~must~~ include silk yarn particularly when we know that silk is generally made available initially in the shape of yarn. Silk would not, however, include rayon, which is artificial silk made from cellulose. Nor would rayon yarn or silk yarn be included in thread. Yarn has been defined in the Oxford English Dictionary as originally spun fibre as of cotton, silk, wool or flax, now usually fibres spun and prepared for use in weaving, knitting or in the manufacture of sewing thread. Thread has been defined therein as a fine cord composed of the fibre or the filaments of flax, cotton, wool, silk, etc., spun to a considerable length especially such a cord composed of one or two yarns twisted together. It would, therefore, seem that yarn is the genus and thread is the species, i.e., thread is a specially processed variety of yarn. ~~xxxxxxxxxxx~~ Thread, therefore, cannot be held to be the same as yarn. In my opinion, therefore, the Municipality will be within their rights in levying octroi on silk yarn under the heading "silk" but will not be

justified in levying octroi on artificial rayon yarn.

Sd/-P.M.L.
3/11
Remembrancer of Legal Affairs.

U.R. to L.SIG. & P.H.D. No. 18254/A dated 3rd November 1952.

B.K.S. 11/5/ 5c.

Bombay Municipal Boroughs Act, 1925.

R.L.A's opinion No. 14065, dated the 28th August 1952.

The R.L.A. in his last opinion No. 14065, dated the 28th August 1952 opined, "If there is any truth in the allegations of Shri Bopshetty, it would be possible to argue that the resignation was under such conditions as would not make it effective even as a notice. It appears that the Director of Local Authorities has been asked to report on the allegations of Shri Bopshetty and that report has not yet been received by Government. Local Self Government and Public Health Department may, therefore, await receipt of the report of the Director of Local Authorities and after receipt thereof it may be forwarded to Legal Department for considering the whole question . While forwarding the report of the Collector, the Director of Local Authorities has advised a compromise being made between the parties before the end of this month. The Collector in his report has stated, Shri Bopshetty was sick of the adverse attitude of the majority party which led him to think of leaving service. Shri Bopshetty had put in 20 years service in the Municipality. The present rules do not make him eligible for pension for this much service. The municipality had already revised the pension rules which are under the consideration of Government. The latter rules provide for granting of pension fr 20 years' service and Shri Bopshetty might have thought of availing himself of the benefit. It is therefore possible that an agreement was contended by Shri Bopshetty might have taken place orally between Shri Bopshetty and the majority party that he should retire from service as soon as the pension rules have

been sanctioned by Government and that Bopshetty should give an un-dated letter of resignation of service as a guarantee for this agreement. No experienced man having put in 20 years' service would tender an un-dated letter of resignation. It is to be noted here that the resignation is in the hand of Shri Chinchalkar, the Municipal Accountant, and not in the hand of Shri Bopshetty. Shri Bopshetty sent a telegram to the President on 4th July 1952 intimating withdrawal of his resignation. The majority party passed a resolution on 10th July 1952 accepting it." It is apparent from this report that the allegations of Shri Bopshetty appear to be substantially correct and his resignation could not be voluntary and unqualified. In the circumstances as pointed out by the R.L.A., in his last opinion mentioned above, the resignation of Shri Bopshetty could not be effective even as a notice and the resolution of the Municipality accepting his resignation was illegal.

Sd/- P.B.L.
15/11
Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D., No. 19115/A, dated the 17th November 1952.

B.R.S. 11/5/ 5c.

R.I.No.24635/ 3-10-52.

Submitted.

2. The question for R.L.A's consideration is whether it would be legally feasible for the Broach Borough Municipality to make a contribution in-aid towards the expenditure of the Sevashram Hospital, Broach.

B.K.J. 11/5/ 5c.

Legal Department.

Any contribution by the Broach Municipality out of its funds to the Sewashram Hospital, Broach would not be lawful in as much as it would contravene proviso (b) to section 66 of the Bombay Municipal Boroughs Act, 1925.

2. This case was discussed with Minister (Law) and it has been decided to ask the Local Self Government to have an amending Bill to cover such cases. The Minister has suggested an alteration in the draft Bill forwarded to the Local Self Government and Public Health Department with U.R.No.6661, dated the 29th April for that purpose.

Id/------- 10/11
Additional Secretary to Government.

U.O. to L.S.G. - P.H.D., No. 10694/A, dated the 10th November 1952.

B.K.O. 11/5/ 5c.

L.D.R.I. No. 26441 dt. 25th Nov.52.

Submitted with reference to notes of L.S.G. & P.H.D. at pp.19-20 ante.

2. The Navsari Municipality has proposed to delete item 6 from its octroi schedule. Item 63 pertains to the levy of octroi on fish of all kinds, Shrimps, bumblas. Income under this item of the sanctioned octroi schedule was Rs. 52-5-3- during the month of June '52. Prior to the operation of the schedule, there was no octroi duty levied on fish. The Municipality did not publish this proposal for inviting public objections on the strength of phraseology of sec. 75(c) of B.P.M.Act, 1925 and A.L.A's opinion of 27-8-28.

3. The Dr. of Local Authorities points out that the deletion of item no. 63 from the octroi schedule would mean an amendment of the octroi schedule and as such the whole procedure under sec. 75 of B.P.M.B. Act requires to be followed. As to the R.L.A's opinion Dir. points out that this opinion has no bearing on the present proposal. L.S.G. & P.H.D., however, considers that as the deletion of this item from the octroi schedule is not going to cause any burden on the public, it do s not seem necessary to publish the proposal. The papers are, however, sent for R.L.A's opinion whether the view taken by L.S.G. & P.H.D. is correct.

R.L.A. Sd/-P.H.L.
2/12

B.K.S. 11/5/ 52.

Office of the R.L.A.

The view taken by the Director of Local Authorities is correct. Item 63 can be deleted from the Octroi Schedule of the Navsari Municipality only after following the procedure prescribed in Chapter VII of the Bombay Municipal Boroughs Act, 1925; see section 60. The fact that the delition of the item 63 from the Schedule would involve no burden on the public would be no valid ground for not following the prescribed procedure; and it is equally necessary to follow the procedure when the municipality is going to lose its revenue. R.L.A.'s opinion No.9 dated 27-8-1948 has no application to the present case.

Sd/- P.M.L.
3/12
Remembrancer of Legal Affairs.

U.R. to L.S.G. & I.H.D., No. 20313/A, dated the 4th December 1952.

B.K.S. 11/5/ 52.

L.D.R.I.No. 29748/10-12-52.

Submitted with reference to L.S.G. and P.H.D. note at pp. 19-20 ante.

2. My U.O., L.S.G. & P.H.D. No. S.91(38) dated 5-9-52, Govt., have sanctioned the Rules and Bye-laws framed by the Bhusaval Municipality for levy of general and special water rates. The Municipality has not yet begun to supply water, but two questions have been raised in connection with the levy of the rates which have been submitted by it to R.L.A. for advice. They are:-

(1) Whether Municipality can levy a general water rate on all houses before the water stand posts are erected and water supplied; and

(2) If a house owner informs the Municipality that he is desirous of taking a private water connection then at what rate is he to be charged the general water rate before the water is actually supplied.

The L.S.G. and P.H.D. considers that no rate can be levied before water is supplied and therefor the answer to question (1) is in the negative and that the question (2) does not survive. However, the R.L.A. is requested to advise.

B.A.D. 11/5/ 52.

OFFICE OF THE R.I.A.

Levy of water rate

Bombay Municipal Boroughs Act, 1925, sec.73(x).

The view taken by L.&.C. & P.H.D. on the first question is correct. In the Brahman Mitra Mandal Co-operative Society Ltd. v. the Municipality of Ahmedabad, 42 Bom. L.R. 587, it has been held that the true construction of the clause (x) of section 73 is that the Municipality can charge a water rate if they supply water to the borough. Therefore, no rate can be charged if no supply is made. As regards the second question attention is invited to Rule 1, in Part II of the Rules and Bye-laws sanctioned for the levy of general and special water rate. It is clear from this Rule that only in respect of those buildings having a private connection that a rate of 25 is to be charged and this lower scale will be applicable only when there is a connection and not otherwise.

2. The Municipality may be charged a fee of Rs.80/- for this opinion (vide Rule 21(2) of the Law Officers Rules).

Sd/-P.M.L.
12/12
Remembrancer of Legal Affairs.

U.O. to L.&.C. & P.H.D.No. 20092/A
dated the 12th December 1952.

B.L.J. 11/5/ 5c.

Office of the R.L.A.

The question for R.L.A's consideration is whether in absence of a resolution of the Malegaon Borough Municipality it would be proper to entertain the loan application signed by the President, Vice-President and the Chairman of the Standing Committee of the Malegaon Borough Municipality or in other words whether the transaction would be binding on the Municipality.

Section 3 of the Local Authorities Loans Act, 1914 provides that a local authority may subject to the prescribed conditions borrow on the security of its funds or any ~~xxx~~ portion thereof for any of the specified purposes. The expression 'local authority' as defined in section 2 means "any person legally entitled to the control or management of any local or municipal fund or legally entitled to impose any cess, rate, duty or tax within any local area etc." The Malegaon Municipality is a Borough Municipality and is subject to the provisions of the Bombay Municipal Boroughs Act, 1925. Under section 65 of the Bombay Municipal Boroughs Act the control or management of the municipal fund is vested in the municipality as a whole that is to say the Municipality as constituted under the Act consisting of all the elected and nominated councillors. It is therefore this 'person' i.e. the municipality as a whole that would be a local authority within the meaning of section 2 of the Local Authorities Loans Act, and the application for a loan under the Act would have to be made by or under the authority of that body. Under the Bombay Municipal Boroughs Act the President, Vice-President and the Chairman of the Standing Committee have either jointly or individually no powers to apply for the loan or to represent the Municipality in this behalf. Besides they have no power to offer as security the fund of ~~the fund of~~ the Municipality for the loan advanced.....

advanced by Government. Therefore in absence of a resolution of the Malegaon Municipality the ~~ix~~ loan application submitted by the President, Vice-President and Chairman of the Standing Committee of the Malegaon Municipality to Government could have to be considered an unauthorised and no loan can be raised nor granted on such application.

Sd/-P.M.L.
9/12
Remembrancer of Legal Affairs.

R. to L.J.D. ~ P.H.D. No. 207108 dated 10th December 1952.

B .K.-. 11/5/ &c.

Office of the M.L.A.

It appears that neither section 214 nor section 215 of the Bombay Municipal Boroughs Act can be pressed into service. The Sub-Committee of the Municipality considered that there was no nuisance from the mill the the neighbouring houses and people but, however, suggested that the owner of the mill should dig up a pit of about _ ft. in width along the northern boundary of the shed in which the mill is erected and the same should be filled in with sand so as to absorb vibrations of the engine. This kind of suggestion made to the owner of the mill cannot be considered as an order binding on him. Under section 186(1) the Standing Committee can by a written notice require the owner or occupier to use the building or place in such manner and after such structural alterations as the Standing Committee in such notice prescribes so that it may not become or may be no longer a nuisance or dangerous. It appears from the record that the operation of this mill is likely to be dangerous to the adjoining buildings. If so, the Standing Committee can pass an order under this provision in terms of the suggestion made by the Sub-Committee so that it would be an order binding on the mill owner.

sd/- M.L.
5/12
Remembrancer of Legal Affairs.

U.O. to L.S.G. & P.H.D., No. 20530/A, dated the 6th December 1952.

S.H.S. 11/5/ 4c.

L.D. M.I.No. 20303/-12-52.

Submitted with reference to H.D. Note dated 20-11-52 at page 7 ante.

The Examiner, L.F.A., seeks further clarification of the legal position stated by the A.L.A. in his opinion No. 7613, dated 15-10-49, as the said opinion does not specifically state as to whether the Municipalities governed by the Bombay Municipal Boroughs Act, 1925 and District Municipal Act, 1901, can legally incur the expenditure on the erection and maintenance of traffic signals and traffic islands within the Municipal area and further states that from the A.L.A's above opinion, it appears that the Municipalities may at their discretion incur expenditure on the erection and maintenance of cautionary road signs and traffic signals will be the obligatory functions.

As regards the construction and maintenance of traffic islands, it has been held by the A.-G.A. that the expenditure incurred by the Municipalities on these islands would fall under section 114(1) and 66 of the Bombay Municipal Boroughs Act, 1925, though section 66 is apparently intended to regulate the expenditure to be incurred by the Municipalities outside the Municipal area.

The papers are however sent to A.-G.A. for his advice on the question as to whether the Municipalities are competent to incur the expenditure on the regulation of traffic within the Municipal area and whether it is the intention of Government to pay a part of the expenditure by way of contribution.

D.S. (Civil) Reply may be :-

A

The legal position stated by H.D. in para 2 of its office note at p 7 ante is correct

A

Sd/-M.P.K. 6/12

R.L.A. Sd/-M.M.L. /12

U.L. to H.D. No. 20733 dt. 10-12-52.

B.A.S. 11/5/ 4c.

Office of the H.L.A.

Bombay Municipal Boroughs Act, 1925- Sections 73(x) and 76- Sanction given to municipality under certain conditions.

By G.R., L.S.G. & P.H.Department, No.S.91 (87), dated 15th April 1948, Government sanctioned the proposal of the Sholapur Municipality to revise its rules ~~xxxxxxxx~~ regarding taxes and fees. The amendments in the rules have been printed in the accompaniment to that resolution. Rule 18, as revised, provides for the increase in the general water rate as specified in column 3 against that rule. In column 4, which relates to remarks, it is stated that the increase in the taxation ~~xx~~ as per column 3 to be given effect to at the time when the municipality sends proposals to Government for the loan for water supply scheme. In the remarks column relating to the general water rate on buildings and lands it is stated that out of the increase mentioned in column 3, 50 per cent increase is to be made applicable immediately and the next 50 per cent increase at the time when the municipality sends proposals to Government for raising the loan for the water supply scheme. It appears from the papers underlying this G.R. that the aforesaid conditions in column 4 of remarks were attached by Government while sanctioning these rules. L.S.G.& P.H.Department considers that the remarks made in column 4 cannot be given effect to and no increase in the tax can be allowed unless the actual service regarding supply of water is rendered under its water supply scheme, even though the municipality has now applied for the loan for the water supply scheme. H.L.A. is requested to advise whether the view taken by the L.S.G. & P.H.Department is correct.

The view taken by the L.S.G. & P.H.Department that no increase in the tax can be allowed

unless the municipality has actually done the service of supplying water under its new water supply scheme, does not appear to be correct. It is true that section 73, clause (x) of the Bombay Municipal Boroughs Act,1925, provides for a general water rate or a xx special water rate or both for water supplied by the municipality, etc.....This provision was considered by the Bombay High Court in the Brahmin Mitra Mandal Co-operative Housing Society vs. the Municipality of Ahmedabad, 42 Bom. L.R., 587, where it was held that the expression "water supply by the municipality" means water supply for general public purpose and is not limited to water connected to particular premises, and the true construction of the clause is that the municipality x can charge water rate if they supply water to the borough. The Sholapur Municipality, it appears, is already supplying water to the borough. For improving that supply, it appears that the municipality has applied for a loan and in anticipation of such loan Government inserted the conditions. If the Sholapur Municipality is already supplying water there would be no legal objection to increasing their tax even though the new scheme for the supply of water has not come into force. It would, therefore, follow that the municipality cannot be prohibited from increasing the water rate and general rate merely on the ground that it has not commenced its service under the new scheme.

Under section 76 of the Bombay Municipal Boroughs Act,1925, Government is given power to refuse to sanction the rules submitted under section 75 or to return them to the municipality for further consideration; or if no objection or no objection which is in its opinion sufficient, was made to the proposed tax within the period prescribed under section 75, may sanction the said rules without modification, or subject to such modifications not involving an increase in the amount to be imposed, or to such conditions as

to the application within the municipal borough to any purpose or purposes of this Act specified in such conditions of the whole or any part of the proceeds of the tax, as it deems fit. Conditions imposed by Government in respect of the increase in the general water rate and the general rate on buildings and lands do not appear to fall strictly within the ambit of section 76. If so, these conditions will have to be ignored; in which case the municipality would be entitled to levy the increase in the general water rate and the general rate on buildings and lands with effect from the date on which the revised rules were sanctioned by Government. Assuming that these conditions are valid, then the municipality would be entitled to levy the increased tax immediately it makes an application to Government for the loan. In either case, the municipality would be entitled to levy the increased rate now as it has already made an application for loan to Government.

Sd/- P.M.L.
17/12
Remembrancer of Legal Affairs.

U.O. to L.S.G.& P.H.D. No. 20893/A, dated the 12th December 1952.

S.K.G. 11/5/ 4c.

L.D.R.I. No. 26977/ dt/2-11-52.

Submitted with reference to L.S.G. &P.H.D. note dated 22/23rd Novr. 1952, at pp. 37-42.

It appears that the Baroda Municipality published the notice regarding the rules and bye-laws in Gujarati but published the rules and bye-laws in English. It further appears that Shri Himatlal B. Patel and 1400 other inhabitants of Baroda sent a printed notice in time to the Barcda Municipal Authorities requesting them to publish the rules and bye-laws in Gujarati. The Baroda Municipality without publishing them in Gujarati forwarded them to Government for sanction. Shri Himatlal Patel has now addressed a representation to Govt. stating that as the rules any bye-laws are to be published for the information of persons who are likely to be affected thereby, they should be published in Gujarati. He states that he has filed a suit against the Baroda Municipality for a declaration that the draft rules and bye-laws approved by the Municipality are altravires and void. L.S.G. & P.H.D. states that it is incumbent on the Municipality to publish the rules and bye-laws in Gujarati as required by clause (c) of bye-law 1 of the Municipality sanctional in G.R.S.91(177) dated 4-2-1952. The L.A.A. is however requested to advise whether it is open to Govt. to cure the irregularity committed by the Baroda Municipality by recourse to any other provisions of the Bombay Municipal Boroughs Act, 1925. The A.A.A. is also requested to advise whether that Dept's view that in view of the suit filed it seems desirable to postpone according sanction to the rules and bye-laws is correct.

Id/----------
22/11

D.S.(Civil)

B.R.S. 11/5/ 4c.

Office of the R.L.A.

Sub-section (2) of section 61 of the Bombay Municipal Boroughs Act, 1925 (Bom. XVIII of 1925), provides that a municipality shall, before making any by-law under this section, publish in such manner as shall in its opinion be sufficient for the information of the persons likely to be affected thereby, a draft of the proposed by-law together with a notice specifying a date on or after which the draft will be taken into consideration. By-law No.1(c) framed by the Baroda Municipality provides that such notices (public and general notices) may also be published only once in any one of the local news-paper as may be selected in each case by the Chief Officer and all such notices shall be in Gujarati. Section 61(2) of the Act appears to make a distinction between the publication of draft by-laws and publication of a notice in respect thereof. As stated above, By-law No.1(c) requires that all public and general notices shall be published in Gujarati. There is nothing in this By-law requiring the municipality to publish the draft by-laws also in Gujarati. All that is necessary under section 61(2) is that it shall be published in such manner as shall in the opinion of the municipality be sufficient for the information of the persons likely to be affected thereby. The fact that the Baroda Municipality published the draft by-laws in English would indicate that the Municipality considered the publication of the draft By-laws only in English sufficient for the purpose, although it published the general and public notice in respect thereof in Gujarati as required by-law No.1(c). Consequently, it appears that, strictly speaking, the procedure followed by the Municipality was correct and the non-publication of the draft by-laws in Gujarati would not invalidate the by-laws, although their publication in Gujarati would have been desirable in view of the fact that about seventy per cent of the population of the town do not know English. Since, however, the matter is already pending in Court, it appears desir-

desirable either to await the decision of the Court if the suit is ~~xxxx~~ likely to be decided within a reasonable time, or to require the municipality to republish the draft by-laws in Gujarati and follow the procedure afresh.

Sd/-P.M.L.
27/11
Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D., No. 20002/A dated the 20th November 1950.

S.K.C. 11/5/ 4c.

Office of the B.L.A.

Under section 4(1) of the Baroda 'A' Class Municipalities Act,1949 and of the Baroda Act relating to 'A' Class Municipalities which it replaced on the 10th March 1949, the Sar Subha was empowered with the sanction of the Huzur by notification in the State Gazette, to extend, contract or otherwise alter the limits of any municipality. It has been stated by the Collector of Baroda that the area of the Industrial Zone, Baroda, has not been included within the limits of any municipality. It has been stated by the Collector of Baroda that the area of the Industrial Zone, Baroda, has not been included within the limits of the Baroda City Municipality by any notification as contemplated by the above provision. The Baroda City Municipality appears to have assumed that the said area was included within its limits under the Baroda Government Order No.B.38/125, dated the 8th April 1949 for the purposes of the Municipal Act. This assumption does not appear to be correct. The order dated the 8th April 1949 is to th following effect and is signed by the Chief Secretary to the Baroda Government:

"The Government direct that the area demarked for industrial zone including the Alembic Chemical Works Co.Ltd. should not be kept outside the City Municipality limits as ordered under Huzur Order dated 19-1-1948. paragraph 15."

The Huzur Order dated the 19th January 1948 is at pages 15-16 ante. All what it purports to do is to sanction administratively the proposal to exclude the said area from the municipal limits. Although ordinarily under the Baroda Law the Huzur Order for all practical purposes operated as having the force of law, in this particular case, the Huzur Order did not lay down any law but merely stated the inclusion as directory, that is to say, that the industrial area which was therefore

excluded from the municipal limits, should remain so excluded. The Baroda Government's subsequent order dated the 8th April 1949 directing the inclusion of the said area within the municipal limits as is apparent from it is not a Hunur Order and would not by itself, that is to say in the absence of a statutory notification under th Act, be sufficient to ~~b~~ alter the municipal limits. Nor ~~b~~ would the handing over of the area to the Municipality and the custody certificate passed in that behalf change the legal position. The municipality has ~~ma~~ on the assumption that the area is included within its limits levied property and other taxation in that area and has been involved in litigation. A notification under sections 4 and 7 of the Bombay Municipal Boroughs Act,19~~5~~5 would be prospective in its operation and cannot validate past acts. Since the matter is subjudice, the decision of the suit may be awaited

Sd/-P.K.L.
20/12
Remembrancer of Legal Affairs.

U.K. to L.S.G. ~~I~~ F.H.D.No. 2159~~0~~/A, dated the 22nd December 1952.

B.K.J. 11/5/ 4c.

OFFICE OF THE R.I.A.

It appears that Shri Ganesh Pictures, Bijapur, are using their Bijapur office for storage of films. These films are sent out to other places for exhibition and on return they are stored again at Bijapur. The Bijapur Municipality has refused to refund the Octroi levied on the films which are returned to Bijapur for storage after being exhibited at other places. The question raised for the R.I.A.'s consideration is whether these films which are sent to a place for exhibition outside the Municipal limits and on which profits accrue by virtue of their use at the places to which they are sent are liable to octroi when they are returned to Bijapur for storage. By-law No.4 of the Bu-laws framed by the Bijapur Municipality in respect of the levy of octroi provides that every person importing goods liable to octroi duty and which are intended to be exported after their import and not intended for manufacture, or any other use or any purpose of profit within the octroi limits shall, at the time of the import make a declaration to the Octroi Barkun in writing to that effect in the form of Schedule G hereto annexed and sign the same. It is apparent from this provision that if the goods are intended to be exported after their import and are not intended for manufacture or any other use or any purpose of profit within the octroi limits would not ordinarily be liable to octroi duty, and if it be levied it will have to be refunded in accordance with the provisions contained in these by-laws. The films which are returned to Bijapur for storage are intended for export when they are required outside and the profit earned on such films outside would not be deemed to be profit earned within the municipal limits of Bijapur. Apparently, therefore, these films when they are imported within the limits of the Bijapur Municipality would not be considered as being for the purpose of profit within the octroi limits

of the Municipality. The profit contemplated is the profit that can be earned within the municipal limits in which the goods are imported. Consequently, these films cannot be considered as being imported for the purpose of profit within the octroi limits when they are returned to Bijapur for storage. Shri Ganesh Pictures would, therefore, be entitled to refund of octroi if on these films provided a declaration in the form prescribed in Appendix C is properly made and refund is claimed within the prescribed time.

Sd/-P.N.L.
20/11
Remembrancer of Legal Affairs.

U.O. to I.G.P. - P.H.Deptt.No. 19451/A dated the 21st November 1952.

B.B.S. 11/5/ 4c.

L.D.R.I.No. 24661/23-10-52.

submitted.

The Liberty Fountain at Baroda, which is an ornamental fountain constructed by Govt., is proposed to be handed over to the Baroda Municipality. Under clause (b) of section 71 of the Bombay Municipal Boroughs Act, the Municipality can provide, at its discretion, wholly or partly for the maintenance of public buildings. L.S.G. - P.W.D. considers that the Liberty Fountain can be considered to be a public building for the purposes of section 71 (b); but L.S.G's is requested to advise.

R.L.A. Sd/- L.S.G.
28/11

L.S.G. 11/5/ 4c.

Office of the R.L.A.

If the Liberty Fountain is a place of public recreation as stated by the Superintending Engineer in his letter at p. 3 ante, the fountain together with the appurtenant land can evidently be treated as a public park and the Baroda Municipality can maintain it under section 71(b) of the Bombay Municipal Boroughs Act, 1925.

Sd/- S.K.L.
29/11
Remembrancer of Legal Affairs.

U.M. to A.S.W., No.20130/a, dated the 2nd December 1952.

S.K.O. 11/5/ 4c.

R.I.Nos. 22299 & 300
23-9-52.

A.S.(Adm.).

In view of the A.L.A.'s advice the L.S.G. and P.H.Department issued Circular No. 183 dated 30-11-1951, stating the legal position as follows:-

" In view of Entry No.56 in List II of the Seventh Schedule to the Constitution read with section 73(1)(xiv) of the Bombay Municipal Boroughs Act, 1925, or section 59(1)(xv) of the Bombay District Municipal Act,1901, as the case may be, it is now competent for a Municipality to levy a tax on goods imported within municipal limits by road or railwroad water-ways. Consequently, instead of providing for deductions from the amount of Octroi levied on goods imported or exported ~~ex~~ within a specified time, the Municipality concerned should frame rules to levy the deduction as a tax only on goods imported by road or railroad, waterways and to prescribe a time limit within which the refund of octroi, subject to levy of the deduction as a tax, should be allowed."

As regards the question of making of refunds from the amount of refund of octroi, the legal position has been clarified in the L.S.G. and P.H.Department circular No.183 dated 13-6-1952, which provides that in virtue of Entry No.56 in List II of the Seventh Schedule to the Constitution, deductions from the ~~A~~ amount of refund of Octroi can be levied by the Municipality on goods carried by road or railroad waterways, but no power to levy such deductions can be given to the municipalities in respect of goods carried by railway, as such deductions would amount to terminal tax on goods within the meaning of Entry 69 in List I in the Seventh Schedule to the Constitution, and consequently, levy of such deductions would be beyond the power of the State and of the Municipalities unless it is saved by article 277 of the Constitution.

B.K.B. 14/5/ 4c.

It appears that the copies of the said circulars were supplied to the Municipalities in the Southern Division, but as no Municipality acted upon the advice, the D.L.A., S.D. proposes that the instructions contained in the above mentioned two Circulars may be consolidated in the form of following draft rules to be adopted by the Municipalities :-

1. Transit Tax.- The Municipality shall levy a tax at a rate equal to one tenth of the Octroi rate on goods which having been subjected to Octroi, are by reason of export entitled to refund under rule.....of the Octroi Rules.

2. The tax shall be recovered at the time of refunding Octroi."

The D.L.A., S.D., appears to have already instructed the Collectors in his Division to instruct the Municipalities to adopt the said model draft rules.

The D.L.A., S.D., has, however, raised the following points for consideration of Govt.,

(1) Discrimination between goods imported by rail and those imported by road or water-way would be difficult in practice and give reason for leakage and mal-practices etc.

(2) As the deductions would be levied as a separate tax, its accounts cannot be mixed up with the octroi accounts, and consequently while the work involved in refunding Octroi would continue, additional labour will be involved in accounting for the new tax;

(3) Since the deductions from refund ex of octroi will in effect be levied as a terminal tax, whether it is necessary to press upon the few municipa-

lities which still levy terminal tax to change over to Octroi; and

(4) whether the present policy of the Municipalities to refuse refund of Octroi not exceeding eight annas should not be reversed since the incidence of tax is likely to fall on smaller rural tax-payers.

The L.S.G. and F.H.Department considers that the only way to get over the difficulties would be to ask the Municipalities not to levy the deductions as a "tax" and to make deductions from the refunds without levying it as a "tax." M.L.A. is requested to advise whether in view of M.L.A.'s Opinion No.9493 of 15-6-51, there would be any legal objection to following the proposed course.

S.E.S. 14/5/ 40.

Office of the R.L.A.

The only point raised for the R.L.A's consideration is whether the Municipalities can be asked not to levy the deductions from the octroi as tax but to make deductions from the refund of such octroi without levying it as a tax. In R.L.A's opinion No.440-Confl. dated the 13th May 1952, it has been clearly stated that deductions from octroi on the export of goods would amount to terminal tax on goods. Consequently, unless these deductions are treated as a tax and so levied, it would not be legally feasible to make deductions from octroi on the export of goods.

Sd/- P.M.L.
Remembrancer of Legal Affairs.

U.R. to L.S.G.& P.H.D. No. 21873A dated the 26th December 1952.

D.R.S. 14/5/ 4c.

D.D., R.I.No. 28283, dated 22-11-52.

Submitted with reference to L.S.G. & P.H.D. note dated 19-11-52.

After declaring the seat of Shri Chunilal Kalidas vacant for the disqualification incurred by him, the Collector proceeded to hold a by-election and had for that purpose fixed the various stages of the by-election. Shri Chuninlal in the meantime preferred on appeal to Govt. ~~grantedxxxxxxxxxxxx~~ direct against the Collector's order and Govt. granted a stay order directing the Collector not to proceed with the by-election. By this time the Returning Officer had already complet d the scrutiny of nominations and due to the stay order all other further stages of the by-election had to be postponed. Govt. subsequently decided not to interfere. When the question whether the by-election could be proceeded with from the stages already completed or it should be held de novo was referred to Govt. for instructions Govt. in L.S.G. & P.H.D. gave instructions according to H.L.A's opinion No. 8595 dated 22nd May 1952. Before instructions could reach there the Municipality had already returned the amounts deposited by the two candidates Shri Vithalbhai Muljibhai Vankar and Shri Punambhai Madhavbhai Joshi. As the return of the deposits was done by mistake both candidates were requested to return the same. Shri Vithalbhai Muljibhai Vankar returned the amount while Shri Joshi did not do so; on the contrary he suggested to postpone the by-election or to invite fresh nominations. The Collector is of the view that as Shri Joshi is not returning the deposit Shri Vankar may be declared to have been elected treating Shri Joshi as having withdrawn. The Director of Local Authorities considers that by-election should

proceed further as already advised by Govt. L.S.G. P.H.D. does not agree with the Director of Local Authorities. The S.L.A. is requested to advise.

B.K.S. 14/5/ 40.

Office of the R.L.A.

Under the proviso to section 29 of the Bombay Municipal Boroughs Act, 1925, no election shall be held to fill up a vacancy occurring within four months of the date on which the term of the Municipality expires. It appears that the general election for the Nadiad Municipality will be held some time in April 1953. If so, it appears that no useful purpose will be served by proceeding with the bye-election to fill the seat, vacated by Shri Chimanlal Kalidas. Under Rule 44 of the Bombay Borough Municipalities Election Rules, 1950, casual vacancies are to be reported by the President to the Collector who shall fix a date as soon as conveniently may be for holding the election to fill the m vacancy and the other rules shall with such modifications as may be necessary apply to such bye-election. Under Rule 12 it is for the Collector to fix the various stages of election. Although the nomination papers have been accepted in the present case, no candidate has been declared elected. Consequently, when the power to fix the stages of election vests in the Collector, it would be competent for him to cancel or vary these stages if he deems necessary for any valid reason. As stated above, the general election is to be held very shortly and it does not appear necessary to hold the bye-election in the present case. If so, there would be no legal objection to the Collector cancelling the various stages already fixed by him on the ground that the bye-election would not be necessary in view of the forthcoming general election. Government may issue instructions to the Collector under section 20 of the Bombay Municipal Boroughs Act, 1925 not to proceed with the bye-election and to cancel the various stages of the by-election already fixed by him.

Sd/- [illegible] 10/12
Remembrancer of Legal Affairs.

U.O. to L.J.G. & P.H.D. No. 20736, dated 10th December 1952.

B.K.S. 14/5/ 4c.

Office of the R.L.A.

Bombay Municipal Boroughs Act, 1925, Sect. 63(2).

Bombay Land Revenue Rules, Rule 32.

It appears that Government has granted some lands to Municipalities under Rule 32 of the Bombay Land Revenue Rules and the Municipalities cannot now use these lands for profitable purposes. If Municipalities are given permission for projecting balconies etc., and to receive rent in that respect there would be a breach of the conditions of the grant. It is, therefore, proposed that the Municipality may give such permission with the prior approval of the Collector subject to the condition that the Municipality shall credit the licence-fees derived from the land to Government. The L.S.G. & P.H. Department considers that in view of the decision of the High Court in 44 Bom. L.R. 354, the proposal would not be legally feasible. The R.L.A. is requested to advise.

2. It is true that if lands are granted to municipalities revenue free under rule 32 of the Bombay Land Revenue Rules, and if these lands are used by the municipalities for profitable purposes, by allowing projecting balconies etc., to be erected thereon there would be a breach of the conditions subject to which the grants have been made, and it would be competent for Government to resume the lands from the municipalities However, in 44 Bom. L.R. 354 which has been printed as an accompaniment to G.R.,R.D. No.8200/39 dated the 15th July 1948, it was held by Beaumont C.J. that there is nothing inherently unjust or unreasonable in the Legislature having provided that property vested in the municipality shall for all times be held for benefit of the local public; and it is noticeable too that the expression in section 63 of the Bombay Municipal Borough Act, 1925, is shall be vested in and

belong to" and the word belong" denotes ownership. In view mx of that decision it appears that the lands transferred by Government to the municipalities even though such transfer be under rule 32 of the Bombay Land Revenue Rules, shall vest in and belong to the Municipalities under section 63(2)(e) of the Act. Consequently, there would arise a conflict between the Statutory provision and the terms of the grant under rule 32 of the Bombay Land Revenue Rules, and the statutory provision would prevail. Therefore, if Government desires that the terms of the grant under / Rule 32 should be legally enforceable, it would be desirable that the Municipal Act should be properly amended for the purpose.

Sd/-P.M.L.
12/12
Remembrancer of Legal Affairs.

U. O. to R.D., No. 21027/A, dated the 13th December 1952.

B.R.S. 14/5/ 4C